ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Jeffrey Adams, *The Assault of Jamie Leigh Jones: How One Woman's Horror Story is Changing Arbitration in America*, 11 PEPP. DISP. RESOL. L.J. 253 (2011).
This article details the incident that led to the Franken Amendment to the 2010 Defense Department Budget and the potential effects of the Franken Amendment to future contracts containing mandatory arbitration clauses.
{44} ARBITRATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Michal Alberstein, *ADR and Transitional Justice as Reconstructing the Rule of Law*, 2011 J. DISP. RESOL. 127 (2011).
The article argues that the critique of the rule of law during the twentieth century inspired development of alternative dispute resolution as well as international Transitional Justice. Furthermore, the article argues that the common principles between these two movements are a result of this inspiration and demonstrate an effort to reconstruct the rule of law.
{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Shahla F. Ali & John Koon Wang Kwok, *After Lehman: International Response to Financial Disputes – A Focus on Hong Kong*, 10 RICH. J. GLOBAL L. & BUS 151 (2011).
This article examines Hong Kong's government-sponsored commercial dispute resolution process. The piece focuses specifically on the use of mediation and arbitration to resolve disputes involving Lehman Brothers Group investors. The article concludes that a multi-tier dispute resolution system provides a potential framework for future investors to seek compensation from negligent financial institutions, first by an expert's decision, then mediation, followed by adjudication or arbitration.
{21} MEDIATION – GENERAL
{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Shahla F. Ali, William E. Davis & Joanna Lee, *Multi-Stakeholder Dispute Resolution: Building Social Capital Through Access to Justice at the Community Level*, 11 PEPP. DISP. RESOL. L.J. 181 (2011).
The authors discuss the impact of collaborative dispute resolution systems in a small community in Peru. Informal dispute resolution systems allow participants to gain social capital as they develop new skills and new relationships as they go through the resolution process.
{60} ADR – GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{92} SUBJ MATTER: INT'L

Cynthia Alkon, *Lost in Translation: Can Exporting ADR Harm Rule of Law Development?*, 2011 J. DISP. RESOL. 165 (2011).
This article questions whether alternative dispute resolution processes may harm rather than help development of the rule of law by undermining rather than building legitimacy. Specifically addressing the issue of introducing alternative dispute resolution methods in countries where corruption is endemic, the article presents questions for practitioners to consider when deciding whether such methods should be introduced.
{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L

Claire Althouse, *"Farming Out" Regulatory Responsibility: Private Parties in the Biotechnology Age*, 23 GEO. INT'L ENVTL. L. REV. 421 (2011).
The regulatory framework for genetically modified organisms (GMOs) is horizontally fractured. Implementation of regulations has been delegated from agencies to manufacturers to producers. Developing and developed nations have different GMO concerns, as shown by the interaction of international treaties with the member state's own priorities. As a result of the regulatory fragmentation, private parties play a role in the regulation through contracts, patents, and litigation.
{60} ADR – GENERAL
{86} SUBJ MATTER: FARM
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

José E. Alvarez, *The Return of State*, 20 MINN. J. INT'L L. 198 (2011).
This article centers on the importance of recognizing the increased empowerment of state governments in the area of international investment law, especially in terms of investor-state dispute settlements and arbitral awards. It supports its argument that state governments are increasingly

empowered in this era of global governance by discussing the trend in investment arbitration that has shifted from investor-favored awards in dispute settlement toward favoring state sovereignty.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Mark Anner, *The Impact of International Outsourcing on Unionization and Wages: Evidence from the Apparel Export Sector in Central America*, 64 INDUS. & LAB. REL. REV. 305 (2011).
This article argues that labor's ability to unionize and improve working conditions in Central America is not dependent on receiving outsourced manufacturing jobs from developed countries, but on labor cost structures, the mobility of capital, and political and institutional contexts. The author proposes that these factors will help shape whether labor will become increasingly fragmented and weak, or capable of organizing unions that can leverage for better wages during negotiations.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)

Amy G. Applegate & Brian D'Onofrio, *Factors Affecting the Outcome of Divorce and Paternity Mediations*, 49 FAM. CT. REV. 16 (2011).
This article discusses the topic of divorce mediation. To study predictors of reaching agreement in family mediation, the authors gathered data from divorce and paternity cases. Research found that numerous factors, including father's reported concerns about participating in mediation, number of mediation sessions, and attorney representation, were associated with lower rates of agreement. The implications of these findings for understanding family mediation processes are examined in this article.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Hiro N. Aragaki, *Arbitration's Suspect Status*, 159 U. PA. L. REV. 1233 (2011).
The author examines the Federal Arbitration Act as an anti-discrimination law protecting arbitration as a "suspect" process. The FAA is too broad in that it preempts too many state laws, but too narrow in that it fails to properly protect arbitration.
{44} ARBITRATION – GENERAL

{102} SUBJ MATTER: PUBLIC POLICY
{128} REQUIREMENTS: STATUTORY OR RULES

Peter Ashford, *Rule Changes Affecting the International Arbitration Community*, 22 AM. REV. INT'L ARB. 87 (2011).
This article looks at the changes and revisions that have recently occurred with international arbitration rules and how not all of these changes are bad. The focus is on the IBA rules and how the revised rules are a useful harmonization of procedures in both common-law and civil law systems so that the author recommends that these should be considered by users of international arbitration.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

R. Lisle Baker, *Exploring How Municipal Boards Can Settle Appeals of Their Land Use Decisions within the Framework of the Massachusetts Open Meeting Law*, 44 SUFFOLK U. L. REV. 455 (2011).
Settlement of zoning disputes presents a unique challenge in Massachusetts because of laws requiring all such decisions to be public. The ordinary give-and-take of settlement seems impossible in this circumstance, necessitating costly appeals. The author suggests instead a multi-step process wherein the settlement itself can be discussed openly, mediated by an inside or outside party, put to a public hearing and vote, and ultimately ratified by the court of appeals.
{1} NEGOTIATION – GENERAL
{77} SUBJ MATTER: COMMUNITY
{87} SUBJ MATTER: GOV'T
{136} ECONOMIC ADVANTAGES OF ADR

Richard A. Bales & Melanie A. Goff, *An Analysis of an Order to Compel Arbitration: To Dismiss or Stay?*, 29 PENN ST. L. REV. 539 (2011).
Where one party in a dispute sues while in an ongoing arbitration, courts should dismiss the case and compel arbitration if all issues in a dispute fall within an arbitration agreement. Where some issues in the dispute lay outside the bounds of the arbitration agreement and cannot be resolved by the arbitrator, the court should stay the case.
{44} ARBITRATION – GENERAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Maria Banda & John Oppermann, *Building a Latin American Coalition on Forests: Negotiation Barriers and Opportunities*, 44 VAND. J. TRANSNAT'L L. 527 (2011).
This article looks at the major substantive roadblocks in the REDD negotiations and identifies a series of analytical, ideological, and structural barriers that impeded significant progress on Latin American forests at Copenhagen. These barriers necessitate the formation of an active and forward-looking Latin American coalition on forests. The authors argue that Latin American countries should form a regional "Core Group" dedicated to forest protection, relationship-building and knowledge-transfer measures.
{44} ARBITRATION – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Robin H. Ballard et al., *Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening*, 17 PSYCHOL. PUB. POL'Y & L. 241 (2011).
The authors conducted a study that looked at the accuracy with which trained mediators could identify cases involving intimate partner violence.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{155} TEACHING

Kourtney Baltzer, Note, *A Clearinghouse: The Solution to Clearing Up Confusion in Gene Patent Licensing*, 24 HARV. J. L. & TECH. 519 (2011).
Confusion and high transactions costs associated with gene patents could be resolved with the creation of a patent clearinghouse. The author argues a clearinghouse could serve as an alternative to banning gene patents. The article describes a proposed structure for the proposed clearinghouse with resolving unclear terminology as an initial step.
{60} ADR – GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{134} DISPUTE PREVENTION

Laura Banks et al., *Hunter-Gatherer Collaborative Practice*, 49 FAM. CT. REV. 249 (2011).
This article describes the development of a practice group based on a hunter-gatherer model, with the mission of providing high quality collaborative divorce services, with an emphasis on protecting children and divorcing partners, and expanding access to middle- and lower-income families.

Collaborative divorce teams formed from its interdisciplinary members serve divorcing families with efficient, cost-conscious, interest-based negotiation processes that protect children and help parties productively move on with their lives.
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Stefan Barriga & Leena Grover, *A Historic Breakthrough on the Crime of Aggression*, 105 A.J.I.L. 517 (2011).
This article looks at the negotiating process that led up to the Review Conference of the Rome Statute of the International Criminal Court adopting of amendments regarding the crime of aggression. It begins at the negotiations that were dubbed the "Princeton Process" and follows the roles that different delegations and debates had in shaping the amendments on the crime of aggression.
{1} NEGOTIATION – GENERAL
{82} SUBJ MATTER: CRIMINAL
{92} SUBJ MATTER: INT'L

Kenneth Beale, Justin Lugar & Franz Schwarz, *Solving the § 1782 Puzzle: Bringing Certainty to the Debate Over 28 U.S.C. § 1782's Application to International Arbitration*, 47 STAN. J. INT'L L. 51 (2011).
The Supreme Court recently expanded the scope of 28 U.S.C. § 1782, a statute pertaining to court-ordered discovery in international proceedings, to include foreign arbitral proceedings as well. The article presents an in-depth history of § 1782, discusses a framework for how courts should apply the law to international arbitral proceedings, and explains why courts have not granted as many discovery requests under the law as expected.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

George A. Bermann, *The UK Supreme Court Speaks to International Arbitration: Learning from the* Dallah *Case*, 22 AM. REV. INT'L ARB. 1 (2011).
This article discusses the effect of the UK Supreme Court's decision in *Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs, Government of Pakistan,* but recognizes that it is still unclear as to what is to happen when courts entertain challenges to enforcement of foreign based claims like the invalidity of an arbitration

agreement. The authors, however, recognize the positive contributions of the court towards sorting out the larger systemic issues.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

George A. Bermann, *Reconciling European Union Law Demands with the Demands of International Arbitration*, 34 FORDHAM INT'L L.J. 1193 (2011).
Looking over the history of European Union law and international arbitration law, the author analyzes the development of both and their intersection, bringing the attention of the reader to the realities and the nature of the challenges presented as each area of law continues to grow and mold together.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Eric M. Bernal, *A Dual-Role Bilingual Mediator is Inefficient and Unethical*, 13 SCHOLAR 529 (2011).
This article discusses the ethical duties and rules, particularly relating to neutrality and confidentiality, of bilingual attorneys who serve as both a mediator and an interpreter. The author analyzes the issues with the dual-role, specifically the ethical quandaries, potential inefficiency, and "interpreter fatigue," to concluded that bilingual mediations should not be used. The author provides a proposal as to what should be done in the context of mediation where parties speak different languages.
{21} MEDIATION – GENERAL
{138} ETHICS – GENERAL

Barbara Black, *Can Behavioral Economics Inform Our Understanding of Securities Arbitration?*, 12 TRANSACTIONS 107 (2011).
Predispute Arbitration Agreements ("PDAAs") a commonly used in agreements between brokerage firms and their customers. The author discusses why PDAAs are seen as unfair and uses a behavioral economics analysis to conclude that PDAAs should be regulated in order to assure fairness.
{44} ARBITRATION – GENERAL
{106} SUBJ MATTER: SECURITIES
{136} ECONOMIC ADVANTAGES OF ADR

Lisa Blomgren Bingham, *Reflections on Designing Governance to Produce the Rule of Law*, 2011 J. DISP. RESOL. 67 (2011).

This article addresses the relationship between the rule of law and dispute resolution through the concepts of dispute systems design and collaborative governance. The article asserts that dispute systems design can be used across the policy continuum to design governance that produces the rule of law. The article argues that dispute resolution as an aspect of collaborative governance can help achieve the rule of law.
{60} ADR – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Paul M. Blyschak, Yukos Universal v. Russia*: Shell Companies and Treaty Shopping in International Energy Disputes*, 10 RICH. J. GLOBAL L. & BUS 179 (2011).
This article examines the implications of an arbitration award set in favor of Yukos Universal Ltd. in a dispute with the Russian Federation. The arbitration panel made two important findings: one, the arbitration tribunal had jurisdiction under Article 26 of the Energy Charter Treaty ("ECT") to hear the Company's claims, and two, the ECT does not shield signatory countries from denying an investor standing once the investor has already commenced arbitral proceedings.
{44} ARBITRATION – GENERAL
{92) SUBJ MATTER: INT'L

Erin E. Bohannon, Note, *Florida Appellate Mediation: Promising New Rules and Ethical Challenges*, 65 U. MIAMI L. REV. 1277 (2011).
This student note analyzes the implementation and utility of Florida's new appellate mediation rules. The article also explores ethical concerns that may arise in their application, sets forth the background of appellate mediation in Florida, discusses the newly adopted amendments to the Florida Rules of Appellate Procedure and Florida Rules of Certified and Court-Appointed Mediators, and compares the new appellate mediation rules to mediation rules from the Eleventh Circuit Court of Appeals.
{21} MEDIATION – GENERAL
{104} SUBJ MATTER: REGULATORY
{138} ETHICS: GENERAL

Michael G. Bowers, Note, *Implementing an Online Dispute Resolution Scheme: Using Domain Name Registration Contracts to Create a Workable Framework*, 64 VAND. L. REV. 1265 (2011).
This note suggests that all businesses operating online should utilize an Online Dispute Resolution process for disputes that arise between customers.

This new obligation would be enforced by the consumers themselves, and would be a requirement in the domain name registration contract. If a company refuses to comply, a customer could initiate a proceeding which would result in the deregistration of the company's domain name.
{60} ADR – GENERAL
{78} SUBJ MATTER: COMPUTER
{79} SUBJ MATTER: CONSUMER

Sean Burke, Note, *Indigenous Reparations Re-Imagined: Crafting a Settlement Mechanism for Indigenous Claims in the Inter-American Court of Human Rights*, 20 MINN. J. INT'L L. 123 (2011).
The increasingly burdensome caseload of Inter-American Court of Human Rights calls for the development of creative settlement practice, such as pilot judgments, and stronger settlement rules in order to more effectively resolve indigenous claims. By speeding up the process and having more forceful compliance rules in place, indigenous claimants should be in a better place to receive appropriate reparations and the Court's caseload burden should be eased.
{44} ARBITRATION – GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{87} SUBJ MATTER: GOV'T
{123} SETTLEMENT: PRESSURES TO SETTLE

Phoenix X.F. Cai, *Making WTO Remedies Work for Developing Nations: The Need for Class Actions*, 25 EMORY INT'L L. REV. 151 (2011).
This article describes how developing nations are at a disadvantage during the WTO's dispute settlement process. This process provides a mechanism for resolving disputes based on alleged government violations of negotiated WTO commitments. As a result of the disadvantage felt by developing nations, the author suggests imposing a class action litigation strategy in which each nation would play an active role in the dispute settlement process.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY

Gralf-Peter Calliess & Jens Mertens, *Transitional Corporations, Global Competition Policy, and the Shortcomings of Private International Law*, 18 IND. J. GLOBAL LEGAL STUDIES 843 (2011).

With global competition policy challenged by the continuing growth of transnational corporations, this article argues that to survive transnational corporations must be able to solve external problems arising in market transactions using internal means. Throughout the article, the author discusses how TNCs often use arbitration panels and tribunals for this reason.
{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Nancy Cameron, *Collaborative Practice in the Canadian Landscape*, 49 FAM. CT. REV. 221 (2011).
This article looks at the growth of collaborative practice in Canada in the last decade and the legal and Canadian cultural underpinnings influencing this growth. The article also looks at decisions from Canadian courts relating to the practice of collaborative law, including the confidentiality of collaborative process negotiations as set out in the participation agreement and the standard of care necessary for collaborative lawyers.
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{92} SUBJ MATTER: INT'L

Michael Q. Cannon, Note, Greenwood v. CompuCredit Corp.*: The Ninth Circuit's Misdirected Interpretation of the Credit Repair Organizations Act*, 2011 B.Y.U. L. REV. 67 (2011).
This note summarizes the relevant facts of *Greenwood v. CompuCredit Corp.*, in which the Ninth Circuit determined that the Credit Repair Organizations Act (CROA) held that the plain meaning of CROA afforded consumers the definitive right to adjudication of all CROA disputes in judicial form. The author concludes that the Ninth Circuit erred in interpreting CROA in a way that was too inhospitable to arbitration agreements.
{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER

Kenneth M. Casebeer, *Supreme Court Without a Clue:* 14 Penn Plaza LLC v. Pyett *and the System of Collective Action and Collective Bargaining Established by the National Labor Relations Act*, 65 U. MIAMI L. REV. 1063 (2011).

This article argues that the Supreme Court's decision in *Penn Plaza* has remade the collective-bargaining system in the United States by enforcing an express contractual duty to arbitrate union members' federal statutory individual rights. The paper specifically contends that the Court individualized the interpretation and enforcement of collective-bargaining agreement to the detriment of employers and employees, as nothing will now prevent the arbitration of all federal remedial statutes at issue between employers and employees.
{44} ARBITRATION – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Pat K. Chew, *Twenty Years After the 1991 Civil Rights Act: What Does the Future Hold? Article: Arbitral and Judicial Proceedings: Indistinguishable Justice or Justice Denied?* 46 WAKE FOREST L. REV. 185 (2011).
This article studies the use of arbitration within employment discrimination cases. The author analyzes the effects of compelling employees to use ADR techniques to resolve disputes with their employers, even when they prefer to litigate their claims in court. The author compares individually negotiated ADR agreements with arbitrations that arise from employer-promulgated ADR plans, and discusses an empirical study comparing ADR and judicial processes within the field of employment disputes.
{44} ARBITRATION – GENERAL
{94} SUBJ MATTER: LABOR – DISCRIMINATION

Josh Chetwynd, *Clubhouse Controversy: A Study of Dispute Resolution Processes between Teammates in Major League Baseball*, 16 HARV. NEGOTIATION L. REV. 31 (2011).
This article addresses all of the various dispute resolution techniques employed by professional baseball players in Major League Baseball. This article begins with an examination of the venue in which players resolve disputes, then introduces the various forms of conflict that arise, followed by the methods used to decide these conflicts, and ultimately concludes with a comparison between Major Leaguers and athletes in other countries regarding dispute resolution techniques.
{60} ADR – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{124} COMPARISONS: CROSS-CULTURAL

Catherine R. Chyi, Comment, *Lessons from China?: Keeping Divorce Rates Low in the Modern Era*, 23 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 285 (2011).
One of the major differences between China's divorce laws and the United States' divorce laws occurs in the stages before the couple reaches adjudication. In China, mediation is often required. Generally, a couple is allowed to utilize the courts only after a consensus cannot be reached through mediation techniques and a judge may decide that it is necessary for the couple to pursue additional mediation.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{124} COMPARISONS: CROSS-CULTURAL

Kathleen E. Claussen, *Engaging Closed Societies through International Arbitration: Lessons from the Cuban Experience*, 17 LAW & BUS. REV. AM. 27 (2011).
This article suggests that Cuban investment laws of the 1990's were not the primary source of the country's social reform and development; Cuba's longstanding commitment to both domestic and international commercial arbitration proves this. However, the author argues that Cuba must market itself to foreign investors to further its development. Finally, the author draws parallels between the Cuban experience and other closed societies and transitional economies, such as Vietnam and Kosovo.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Kenneth Cloke, *Conflict, Climate Change, and Environmental Catastrophe: How Mediators Can Help Save the Planet*, 12 CARDOZO J. CONFLICT RESOL. 307 (2011).
The author focuses on environmental issues resulting from increasing population, technology, and globalization and claims that environmental disasters will become more widespread and severe, leading to more conflicts throughout the world. The author proposes that efficient mediation of environmental conflicts is imperative in limiting the impact of such future environmental disasters.
{21} MEDIATION – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Robert F. Cochran, Jr., *Collaborative Practice's Radical Possibilities for the Legal Profession: "[Two Lawyers and Two Clients] for the Situation,"* 11 PEPP. DISP. RESOL. L.J. 229 (2011).
Cochran explores the contours of collaborative legal practice and its effects on the lawyers and clients mindsets towards settlement and fairness.
{53} COLLABORATIVE LAW – GENERAL
{73} SUBJ MATTER: GENERAL

Amy J. Cohen, *The Family, the Market, and ADR*, 2011 J. DISP. RESOL. 91 (2011).
This article discusses the relationship between alternative dispute resolution and the rule of law in the context of the division between the market and the family. The article addresses the criticism of alternative dispute resolution as a privatization of lawmaking by examining the ways in which alternative dispute resolution proponents' views of the private sphere have evolved.
{60} ADR – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Julio C. Colon, Note, *Choice of Law and Islamic Finance*, 46 TEX. INT'L L. J. 411 (2011).
This article examines difficulties arising Islamic finance disputes. Often Sharia compliant contracts draft choice of law provisions combining the law of Sharia and that of a country. When resolving a contract dispute in a court of law, problems arise when Sharia principles purportedly override the law of that country. Those seeking to engage in Sharia-compliant transactions find a preferable venue in an arbitral tribunal specializing in Islamic finance.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Diana M. Comes, Note, *Meet Me in the Middle: The Time is Ripe for Tennessee to Adopt the Uniform Collaborative Law Act*, 41 U. MEM. L. REV. 551 (2011).
This article argues that Tennessee should adopt the new Uniform Collaborative Law Rules and Act because it actively addresses ethical considerations in collaborative law, will give greater legitimacy to the practice, and its ethical provisions square with those in the Tennessee Rules of Professional Conduct. The article outlines collaborative law's journey to

its current popularity, discusses concerns about the ethic aspects of collaborative law, examines states' attempts to regulate these ethical quandaries, and shows that the UCLA provides the most comprehensive ethical guidelines to date.
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{138} ETHICS: GENERAL

Jeremy Corapi, *Huddle Up: Using Mediation to Help Settle the National Football League Labor Dispute*, 21 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 789 (2011).
Focusing on the importance of party relationships and the nature of the National Football League as a professional sports industry, the author illustrates how a properly conducted mediation can be used to resolve labor disputes between management and players in professional sports leagues. The author goes on to propose guidelines for mediation that would help the NFL, and possibly other professional sports leagues, in reaching agreements over their various disputes.
{21} MEDIATION – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Wendy E. Hollingshead Corbett & Justin R. Corbett, *Community Mediation in Economic Crisis: the Reemergence of Precarious Sustainability*, 11 NEV. L.J. 458 (2011).
The authors analyze the history of community mediation centers and the effectiveness of those centers in resolving local disputes. They then demonstrate that the recent economic downturn has forced some of these centers to shut their doors due to funding problems. Finally, they analyze the strategies that have enabled some centers to weather the storm, all while reinforcing that these centers provide a valuable community service.
{21} MEDIATION – GENERAL
{77} SUBJ MATTER: COMMUNITY

Karen Halverson Cross, *Letting the Arbitrator Decide Unconscionability Challenges*, 26 OHIO ST. J. ON DISP. RESOL. 1 (2011).
This article examines how courts are allocating jurisdictional questions relating to unconscionability to the arbitrator, and assesses the approach of U.S. courts to this issue. The U.S. allocation rule is evolving toward one of deference to the arbitrator, allowing the arbitrator to make an initial determination of whether there is an enforceable agreement to arbitrate.

French law prohibits pre-dispute arbitration of consumer and employment disputes. Recent U.S. arbitrability decisions may prompt Congress to set similar limits on mandatory arbitration.
{44} ARBITRATION – GENERAL
{124} COMPARISONS: CROSS-CULTURAL
{133} COURT REFORMS

Dominique D'Allaire & Rolf Trittmann, *Disclosure Requests in International Commercial Arbitration: Finding a Balance Not Only Between Legal Traditions But Also Between The Parties' Rights*, AM. REV. INT'L ARB. 119 (2011).
This article discusses how there are practical and legal consequences when parties agree to a specific procedure for document disclosure or when they leave it to the practice of arbitral tribunals. Arbitration rules do not address these issues, which leaves the issues flexible, and arbitral tribunals should consider submissions by the parties with respect to disclosure requirements, and these tribunals should take into account the parties' domestic discovery rules.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERICIAL
{92} SUBJ MATTER: INT'L

Jamison Davies, Note, *Formalizing Legal Reputation Markets*, 16 HARV. NEGOTIATION L. REV. 367 (2011).
In this article, the author advocates for a more formal and publicized market for legal reputations. Reputations are important in the negotiation context, as a good reputation can lead to more information sharing among negotiators. The author proposes relying on derivative contracts and ratings clearinghouses to make formalized legal reputation markets.
{1} NEGOTIATION – GENERAL
{77} SUBJ MATTER: COMMUNITY
{149} QUALITY CONTROL

William Davis & Helga Turku, *Access to Justice and Alternative Dispute Resolution*, 2011 J. DISP. RESOL. 47 (2011).
This article discusses the role that access to justice plays in the development of states. In addition to reviewing access to justice in general and the challenges states face in implementing programs that promulgate rights, the article specifically focuses on the role that alternative dispute resolution plays in creating access to justice.

{60} ADR – GENERAL
{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY

Nicole M. DeMuro, *Reestablishing the Role of Arbitration in Labor Law: Avoiding the Perils of* Williams *with the Rationale of* Pyett, 21 SETON HALL J. SPORTS & ENT. L. 467 (2011).
This article discusses the effect preemption has on state law claims regarding drug testing policies implemented in professional sports. The author focuses on section 301 of the Labor Management Relation Act (LMRA) and the Eighth Circuit's decision in *Williams v. National Football League* to argue in favor of reestablishing the role of arbitration for state statutory claims.
{44} ARBITRATION – GENERAL
{93} SUBJ MATTER: LABOR – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Michael Diamond, Note, *'Energized' Negotiations: Mediating Disputes over the Siting of Interstate Electric Transmission Lines*, 26 OHIO ST. J. ON DISP. RESOL. 217 (2011).
Courts have customarily granted utilities substantial deference as to their takings procedures, but the *Kelo* opinion and its accompanying legislative backlash should urge courts to place greater capital into condemnors' integration of landowners when adjudicating eminent domain cases for transmission line projects. With expanded federal jurisdiction over the siting of interstate transmission facilities, these regional bodies would be best suited to balance local and national interests, and thus would be charged with overseeing the process of negotiations and mediation between landowners and transmission developers.
{1} NEGOTIATION – GENERAL
{103} SUBJ MATTER: PUBLIC UTILITIES
{104} SUBJ MATTER: REGULATORY

Joseph W. Dorn, *Settlements in the United States Court of International Trade: Practices and Policies*, 19 TUL. J. INT'L & COMP. L. 433 (2011).
While using alternative dispute resolution techniques to achieve settlements is favorable for many reasons, some cases before the United States Court of International Trade (CIT) are such that achieving a settlement is not easy. The author describes how various courts effectively facilitate settlements. The author then explains why cases before the CIT are unique, and concludes that the court should take more steps to facilitate settlements.

{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY

Christopher R. Drahozal, *Contract and Procedure*, 94 MARQ. L. REV. 1103 (2011).
This article examines the questions underpinning procedural contracts and discusses their history through examination of changes in franchise arbitration clauses. It also analyzes the Supreme Court's decision in *Rent-A-Center* and defends a blend of self-regulation and judicial oversight as the optimal form of regulation of procedural contractual freedom. The article finally discusses the Court's decision in *Stolt-Nielsen* and argues that courts must construe the decision narrowly in order to reaffirm a deferential approach to an arbitrator's gap-filling authority.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{104} SUBJ MATTER: REGULATORY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Nancy Neveloff Dubler, *Fulcrum for Bioethics Mediation*, 74 LAW & CONTEMP. PROB. 177 (2011).
Bioethics presents a set of ethical tenants describing the medical relationship and physician responsibilities; bioethics mediation is an application of ethics in which a trained professional acts as a consultant to a medical team to address a previous patient care plan that needs amended. Bioethics mediation can improve patient-family-physician relationships. Moreover, utilizing principled resolution can further improve bioethics mediation.
{21} MEDIATION – GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Susan Hanley Duncan, *Restorative Justice and Bullying: A Missing Solution in the Anti-Bullying Laws*, 37 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 267 (2011).
This article analyzes the pattern of bullying in school and the punishments levied against bullies. While current policies usually result in harsh punishments, both in school and criminally, the author asserts that it would be more effective to focus on reconciliation and re-integrating bullies into the social fabric of the school.
{60} ADR – GENERAL
{83} SUBJ MATTER: EDUCATION

Jeffrey L. Dunoff, *Hudec's Methods – and Ours*, 20 MINN. J. INT'L L. 365 (2011).
The author analyzes Professor Robert Hudec's perspective on the role of developing countries in General Agreement on Tariffs and Trade (GATT) negotiations. In particular, this article discusses the divergent interests of developed states and developing states in international trade negotiations. Focusing heavily on the proliferation of preferential trade agreements, the author notes that these agreements may ultimately harm the interests of developing countries and hamper their capacity to liberalize.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L

Horst Eidenmueller, *The Transnational Law Market, Regulatory Competition, and Transnational Corporations*, 18 IND. J. GLOBAL LEGAL STUD. 707 (2011).
The author discusses the rise of the transnational corporation and the changes this brings with respect to dispute resolution, company law, contract law, and insolvency law. In discussing dispute resolution for transnational corporations, especially private arbitration, the author finds that the expansion of choice of law opportunities, for transnational corporations has greatly increased the options for legal arbitrage.
{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE

Giacomo Rojas Elgueta, *Understanding Discovery in International Commercial Arbitration Through Behavioral Law and Economics: A Journey Inside the Minds of Parties and Arbitrators*, 16 HARV. NEGOTIATION L. REV. 165 (2011).
This author identifies the reasons behind the rampant use of discovery in international commercial arbitration processes. Today, arbitrators are given broad discretion regarding the use of discovery. The author suggests that limiting such discretion to order discovery would lead to a more cost-effective and traditional form of arbitration.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Yuval Feldman, Amir Falk & Miri Katz, *What Workers Really Want: Voice, Unions, and Personal Contracts*, 15 EMPL. RTS. & EMPLOY. POL'Y J. 237 (2011).

This article examines the association between voice and unionization and demonstrates the complexity of such a relationship. It presents theoretical perspectives that highlight the individual-psychological aspects of voice. In addition, the article develops an array of challenges to the association between voice and unionization and offers. Finally, the article examines the legal policy implications of empirical research in the area along with presenting a theoretical approach to voice.
{1} NEGOTIATION – GENERAL
{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)
{124} COMPARISONS: CROSS-CULTURAL
{136} ECONOMIC ADVANTAGES OF ADR

Robert Force, *The Position in the United States on Foreign Forum Selection and Arbitration Clauses, Forum Non Conveniens, and Antisuit Injunctions*, 35 TUL. MAR. L.J. 401 (2011).
The article examines jurisdiction in maritime cases, including the enforcement of arbitration clauses in contracts with foreign entities. The author provides a discussion on what happens to cases that are dismissed due to the existence of a foreign arbitration clause. Finally, the author concludes there may be a limited set of cases where a United States court should not enforce a foreign arbitration clause for fairness reasons.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{97} SUBJ MATTER: MARITIME

George K. Foster, *Striking a Balance Between Investor Protections and National Sovereignty: The Relevance Local Remedies in Investment Treaty Arbitration*, 49 COLUM. J. TRANSNAT'L L. 201 (2011).
This article argues that according appropriate significance to local remedies and national court decisions is necessary if investment treaty arbitrations is to viable as a means of dispute resolution. The article examines multiple local remedies cases, distinguishing their holdings from the traditional approach, with each offering distinct propositions of law.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Christina Fox, *Contracting for Arbitration in Custody Disputes: Parental Autonomy vs. State Responsibility*, 12 CARDOZO J. CONFLICT RESOL. 547 (2011).

After a historical analysis of arbitration in child custody disputes, the author argues that child custody disputes create problems in the arbitration process, which outweigh any benefits arbitration may offer as a method of dispute resolution. The article concludes that private judging should be expanded because it incorporates some of arbitration's benefits while reducing risks of arbitration to the children involved in custody disputes.
{44} ARBITRATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{102} SUBJ MATTER: PUBLIC POLICY

Susan D. Franck, *The ICSID Effect? Considering Potential Variations in Arbitration Awards,* 51 VA. J. INT'L. L. 825 (2011).
Focusing on the size of arbitration awards, this article looks at the UN's arbitration policies. It looks at the type of dispute, the parties involved, and the Development Status of the respondent to determine what causes the difference in awards. It attempts to find a difference between the amounts awarded by the International Centre for the Settlement of International Disputes and those of other arbitration processes.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS- CULTURAL

Justin Fraterman, *Article 37(2) of the ILO Constitution: Can an ILO Interpretive Tribunal End the Hegemony of International Trade Law?*, 42 GEO. J. INT'L L. 879 (2011).
This article examines how tribunals organized under Article 37(2) of the ILO constitution could be a counter to the WTO dispute settlement system and an alternative to international trade law. The interplay of international labor and trade law is illustrative of the tensions in international law. An Article 37(2) tribunal would likely have to contend with how its lack of enforcement power might reduce its effectiveness.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR – GENERAL

Clark Freshman, *Lie Detection and the Negotiation Within*, 16 HARV. NEGOTIATION L. REV. 263 (2011).
In this article, the author explores the way in which a negotiator's own desires may change throughout a negotiation. Understanding what one wants

in a negotiation is key to responding to the lies or deception of an opposing negotiator.
{1} NEGOTIATION – GENERAL
{151} ROLE OF LAWYERS

Stephen E. Friedman, *Arbitration Provisions: Little Darlings and Little Monsters*, 79 FORDHAM L. REV. 2035 (2011).
Judicial application of unconscionability doctrine to refuse enforcement of contract arbitration provisions is contrary to the Federal Arbitration Act. Congress determined that arbitration provisions are beyond judicial skepticism and intended to remove unconscionability from the tools available to courts in policing contract arbitration provisions. Unconscionability should not be applied to contract arbitration provisions because it is different from fraud and duress.
{44} ARBITRATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Stephen E. Friedman, *A Pro-Congress Approach to Arbitration and Unconscionability*, 106 NW. U. L. REV. COLLOQUY 53 (2011).
This article attempts to resolve the controversy surrounding the application of the unconscionability doctrine to arbitration agreements. It tries to rectify the policies of the Federal Arbitration Act with the unconscionability doctrine. The author puts forward his position in trying to resolve this apparent discrepancy in the law.
{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY

James M. Gaitis, *Clearing the Air on "Manifest Disregard" and Choice of Law in Commerical Arbitration: A Reconciliation of* Wilko, Hall Street, *and* Stolt-Nielsen, 22 AM. REV. INT'L ARB. 21 (2011).
This article considers manifest disregard and choice of law. The article demonstrates that manifest disregard is an unnecessary addition when discussing choice-of-low provisions in agreements to arbitrate, that the manifest disregard concept is subsumed by the FAA, that the two are tied to the question of whether contracting parties can rely on courts for enforcement, and that based on Supreme Court decisions, manifest disregard of the law is a catch-all misnomer.
{44} ARBITRATION – GENERAL

{75} SUBJ MATTER: COMMERCIAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Leigh F. Gill, Note, *Manifest Disregard After* Hall Street*: Back From the Dead – The Surprising Resilience of Non-Statutory Ground for Vacatur*, 15 LEWIS & CLARK L. REV. 265 (2011).
This article assesses various court decisions following the holding in *Hall Street v. Mattel* and their effect on the doctrine of manifest disregard, concluding that the courts' differing interpretations of the *Hall Street* may result in cynicism regarding arbitration as a process for dispute resolution.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Rebecca Golbert, *The Global Dimension of the Current Economic Crisis and the Benefits of Alternative Dispute Resolution*, 11 NEV. L.J. 502 (2011).
This article notes the internationalization of commerce since WWII, in particular focusing on the impacts of the recent economic downturn on international trade. One result, the article notes, has been an increase in contract disputes for non-performance. As litigating these disputes has gotten more complex and expensive, the author recommends various ADR techniques for more efficient dispute resolution.
{60} ADR – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Meredith Goldich, Comment, *Analyzing the Severability Conundrum Under* Rent-A-Center, West, Inc. v. Jackson, AM. U.L. REV. 1673 (2011).
This author argues that application of *Prima Paint*'s severability analysis creates an inappropriate framework for employment contracts as it was contemplated for embedment of arbitration agreements in broader articles. The author suggests that instead courts adopt a knowing and voluntary standard for different contracts, such as employment contracts.
{44} ARBITRATION – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Katia Fach Gómez, *Latin America and ICSID: David versus Goliath?*, 17 LAW & BUS. REV. AM. 195 (2011).
With increasing ICSID arbitration requests from Latin American countries, current displeasure with ICSID in some countries may spread to other

countries in that region. The displeasure stems from a variety of reasons, including lack of transparency by arbitration panels and a perception of arbitrator bias. The countries are voicing their displeasure by methods such as contracting to avoid ICSID and withdrawing from the ICSID convention.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Nicholas Goodrich, *Dispensing Injustice:* Stolt-Nielsen *and Its Implications*, 2011 J. DISP. RESOL. 197 (2011)
This article discusses the implications of the Supreme Court's holding in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, particularly focusing on potential effects of the case in the consumer context. The article argues that Congress should enact the Arbitration Fairness Act in response to concerns that an extension of the Stolt-Nielsen holding would allow corporations to enjoy immunity in consumer disputes.
{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER
{81} SUBJ MATTER: CORPORATE

David L. Gregory, Rowan Foley Reynolds & Nadav Zamir, *Labor Contract Formation, Tenuous Torts, and The Realpolitik of Justice Sotomayor on The 50th Anniversary of the* Steelworkers Trilogy*:* Granite Rock v. Teamsters, 1 AM. U. LABOR & EMP. L.F. 5 (2011).
This article discusses the United States Supreme Court decision in *Granite Rock Co. v. International Brotherhood of Teamsters*. It compares this decision with the Supreme Court's decisions in the *Steelworkers Trilogy* cases and states that the *Granite Rock* holding will not revolutionize arbitration nor change the way courts view Section 301(A) of the Labor-Management Relations Act.
{44} ARBITRATION – GENERAL
{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)
{102} SUBJ MATTER: PUBLIC POLICY

Betsy J. Grey, *The Plague of Causation in the National Childhood Vaccine Injury Act,* 48 HARV. J. ON LEGIS. 343 (2011).
The Vaccine Act shifts the liability in vaccine tort cases from manufactures to the federal government and creates an administrative remedy. The burden of proof for causation in cases not described in the table of injuries and vaccines created controversy. The author proposes a model that could resolve

the issues of causation in off table claims by establishing an intermediate proof standard through amendment of the Vaccine Act.
{45} ARB: MANDATORY, COURT-ANNEXED — GENERAL
{109} SUBJ MATTER: TOXIC TORTS
{146} ORGANIZATION POLICIES & RULES

Ann C. Gronlund, *The Future of Manifest Disregard As a Valid Ground for Vacating Arbitration Awards in Light of the Supreme Court's Ruling in Hall Street Associates, L.L.C. v. Mattel, Inc.*, 96 IOWA L. REV. 1351 (2011).
This note discusses the implications of the Supreme Court decision *Hall Street Associates, L.L.C. v. Mattel, Inc.* for the common-law doctrine of "manifest disregard of the law." After analyzing the circuit split that has developed on this issue, the note argues that the Supreme Court would most likely hold that manifest disregard is no longer a valid ground for vacatur of arbitral awards under the Federal Arbitration Act.
{44} ARBITRATION – GENERAL
{104} SUBJ MATTER: REGULATORY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Gabriel Hallevy, *Therapeutic Victim-Offender Mediation within the Criminal Justice Process—Sharpening the Evaluation of Personal Potential for Rehabilitation While Righting Wrongs Under the ADR Philosophy*, 16 HARV. NEGOTIATION L. REV. 65 (2011).
This article suggests that victim-offender mediation procedures should inform and influence sentencing decisions in the criminal context. If one of the roles of sentencing is to promote rehabilitation, an offender's rehabilitative potential can be seen through voluntary participation in mediation with the victim. Moreover, this process allows for participation of the victim, offender, and the community, allowing offenders to right their wrongs.
{21} MEDIATION – GENERAL
{82} SUBJ MATTER: CRIMINAL

Jyotin Hamid & Emily J. Mathieu, *The Arbitration Fairness Act: Performing Surgery with a Hatchet Instead of a Scalpel?* 74 ALB. L. REV. 769 (2011).
This article suggests that The Arbitration Fairness Act (AFA) is overbroad in prohibiting pre-dispute arbitration employment agreements. After examining the historical strengths and weakness of employment arbitration agreements, the authors suggest that the AFA would be better suited to address perceived

injustices by limiting it application based upon the position of the employee and the size of the employer.
{44} ARBITRATION – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{136} ECONOMIC ADVANTAGES OF ADR

Whitney Hampton, *A New Twist on an Old Approach: Missouri's Use of Unconscionability and Consent in the Class Arbitration Waiver Analysis*, 2011 J. DISP. RESOL. 209 (2011).
This article examines the Supreme Court of Missouri's decision in *Brewer v. Missouri Title Loans, Inc.* The article discusses the court's new approach to the contract defense of unconscionability in the context of class arbitration waivers and argues that this approach undermines the federal policy in favor of arbitration agreements.
{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Genevieve Hanft, *Giving Arbitration Some Credit: The Enforceability of Arbitration Clauses Under the Credit Repair Organizations Act*, 79 FORDHAM L. REV. 2761 (2011).
Enforcement of arbitration clauses in a consumer credit repair context would do little harm to consumer arbitration and respect arbitration provisions in other areas of law. Because of its social value, courts should not abandon alternative dispute resolution. Arbitration should not be prohibited when a statute does not clearly require it be. This would be in line with judicial support of arbitration.
{44} ARBITRATION – GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

J. Nicholas Haynes, *On Precarious Ground: Binding Arbitration Clauses, Collective Bargaining Agreements, and Waiver of Statutory Workplace Discrimination Claims Post*-Pyett, 2011 J. DISP. RESOL. 225 (2011).
This article discusses the United States District Court for the Southern District of New York's decision in *Duraku v. Tishman Speyer Properties, Inc.* The article argues that this decision strengthens the control that unions and employers enjoy over employees' claims while moving towards a judicial system in which unionized employees are dependent on unions to arbitrate all claims and lack a judicial forum for such claims.
{44} ARBITRATION – GENERAL

{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)
{147} POWER IMBALANCE

Art Hinshaw & Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 HARV. NEGOTIATION L. REV. 95 (2011).
In this article, the authors suggest that negotiation tactics mirror litigation tactics, whereby attorneys seek to withhold information, prove the strength of their argument, and defeat the opposing counsel. To prevent such tactics, the authors propose that there should be more clarification, education, and enforcement of the ABA's Model Rules of Professional Conduct Rule 4.1.
{1} NEGOTIATION – GENERAL
{138} ETHICS: GENERAL

Bernard Hoekman, *Proposals for WTO Reform: A Synthesis and Assessment*, 20 MINN. J. INT'L L. 324 (2011).
The author argues for the implementation of a multitude of proposals for institutional reform, rather than reform of specific rules and policies, including the Single Undertaking practice and consensus-based decision-making. He also argues that WTO negotiators need to better understand the interests of parties in order to cope with "multilateralizing" countries and deal cooperatively with the power imbalance among nations.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L

David A. Hoffman, *Mediation, Multiple Minds, and Managing the Negotiation Within*, 16 HARV. NEGOTIATION L. REV. 297 (2011).
This article asserts that most parties to a negotiation experience ambivalence towards the process: they want a resolution but do not want to settle. The author addresses some of the techniques used to address parties' this ambivalence. The "mixed minds" approach is helpful to understanding the parties' internal feelings concerning negotiations. Once this is accomplished, more successful negotiations will occur.
{1} NEGOTIATION – GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution*, 2011 J. DISP. RESOL. 1 (2011).

This article discusses the relationship between the rule of law and alternative dispute resolution, suggesting that the psychological concept of procedural justice can help alternative dispute resolution systems exist in harmony with rule of law values. The article specifically addresses how procedural justice and the rule of law foster perceptions of legitimacy in alternative dispute resolution, which is often viewed as less legitimate than its formal, judicial counterpart.
{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL

Mirya Holman, Neil Vidmar & Paul Lee, *Most Claims Settle: Implications for Alternative Dispute Resolution from a Profile of Medical-Malpractice Claims in Florida*, 74 LAW & CONTEMP. PROB. 103 (2011).
A viable method of resolving medical malpractice claims is to resolve them using ADR methods rather than litigation. This article seeks to build a profile of the types of cases that are resolved at each pretrial stage of the dispute resolution process, as well as fleshing out each step of the process and setting a timeline for claim resolution.
{60} ADR – GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE

David Horton, *Arbitration as Delegation*, 86 N.Y.U. L. REV. 437 (2011).
This article questions the Supreme Court's Federal Arbitration Act jurisprudence. The author argues that expansive interpretation of the statute has unconstitutionally empowered corporations to privately delegate legislative power by mandating arbitration and the Court should act to restrict the statute.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David Horton, *Unconscionability Wars*, 106 Nw. U. L. REV. COLLOQUY 13 (2011).
This article discusses the controversy surrounding the application of the unconscionability doctrine to arbitration agreements in the context of the Federal Arbitration Act. It goes on to challenge the anti-court and anti-unconscionability theories, explaining that the statute neither strips judges of the power to apply unconscionability nor excludes unconscionability completely.
{44} ARBITRATION – GENERAL

{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY

Richard W. Hulbert, *The Case for A Coherent Application of Chapter 2 of the Federal Arbitration Act,* 22 AM. REV. INT'L ARB. 45 (2011).
This article suggests that the courts should accept an enlarged role for Chapter 2 of the Federal Arbitration Act because it would unify the approach to enforcement of international arbitration awards. The current treatment of awards in the United States is not in accord with the practices and standards used by others in international commercial arbitration.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Kendall D. Isaac, *Pre-Litigation Compulsory Mediation: A Concept Worth Negotiating*, 32 U. LA VERNE L. REV. 165 (2011).
The author explores the idea of compulsory mediation before a case can be brought to trial. He examines various U.S. state laws, as well as foreign countries' laws, that require pre-litigation mediation. Additionally, practice areas such as family law, medical malpractice, and bankruptcy law are suggested as practice areas that might benefit from pre-litigation mediation. Finally, the benefits and shortcomings of pre-litigation mediation are compared and contrasted.
{21} MEDIATION – GENERAL
{73} SUBJ MATTER: GENERAL
{136} ECONOMIC ADVANTAGES OF ADR

Becky L. Jacobs, *Volunteers: The Power of Community Mediation*, 11 NEV. L.J. 481 (2011).
This article articulates the services that community mediation centers (CMCs) provide to their local communities. It focuses on the value of volunteers in making those CMCs successful and provides insights on ways that CMCs can harness their volunteers more efficiently to extract better results and more benefits for their community. Finally, it analyzes the motives that drive community members to volunteer at CMCs.
{21} MEDIATION – GENERAL
{77} SUBJ MATTER: COMMUNITY

Gregory Todd Jones & Douglas H. Yarn, *Designing Arbitration: Biological Substrates and Asymmetry in Risk and Reward*, 12 TRANSACTIONS 123 (2011).

The authors discuss various theories of rational decision-making in order to determine if they can be applied to making arbitration agreements. After discussing several theories on human decision-making, the authors conclude that the theories in their current form have limited use for understanding arbitration agreement decision-making.
{44} ARBITRATION – GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Patricia L. Judd, *Toward a Trips Truce*, 32 MICH. J. INT'L L. 613 (2011).
In light of the groundbreaking WTO dispute settlement panel's decision to deny the United State's claim alleging non-compliance with TRIPS standards against China, Judd argues that the decision has given new flexibility to the application of the TRIPS Agreement. Judd also argues it will allow for the resolution of compliance issues for TRIPS stakeholders in both developed and non-developed countries in the future.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER – INT'L

Vikram J. Kapoor, *Wearing Hats And Walking The Line: How Arbitrators Reconcile Outside Activities and Judicial Duties*, 24 GEO. J. LEGAL ETHICS 625 (2011).
Increased transparency in international investment arbitration would allow arbitrators and parties to better handle situations of possible arbitrator bias or the appearance of bias. The author uses the *Vivendi II* decision to evaluate the system of international investment arbitration. The article examines the current guidance to arbitrators faced with potential conflict of interest cases and possible improvements to the system of international investment arbitration.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{138} ETHICS: GENERAL

Erin Katzen, *Arbitration Clauses in Wills and Trusts: Defining the Parameters for Mandatory Arbitration of Wills and Trusts*, 24 QUINNIPIAC PROB. L.J. 118 (2011).
The author explores issues of consent in formation, procedural issues, and issues that arise from enforcing mandatory arbitration clauses in wills and trusts. The author then offers suggestions as to how legislatures and attorneys could cure the enumerated issues relating to arbitration clauses.
{44} ARBITRATION – GENERAL

{101} SUBJ MATTER: PROBATE

Timothy A. Kelley, Note, *Labor Law Gap-Filling: Federal Common Law Ideals Versus Litigation Realities*, 72 OHIO ST. L.J. 437 (2011).
In *DelCostello v. International Brotherhood of Teamsters*, the Court created a unique labor cause of action distinct from the statutory scheme: the "hybrid" claim, combining a plaintiff-employee's breach of collective bargaining claim against an employer under LMRA § 301 with a breach of duty of fair representation against a union. The *DelCostello* rationale puts the autonomy of private dispute resolution under collective bargaining ahead of individual employee rights.
{1} NEGOTIATION – GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Shelley Kierstead, *A Special Focus on Court-Affiliated Parent Education Programs: Parent Education Programs in Family Courts: Balancing Autonomy and State Intervention*, 49 FAM. CT. REV. 140 (2011).
This article considers how court-connected parent education programs can assist parents to access dispute resolution processes that best suit their families' needs, in a manner involving appropriately curtailed levels of state interference with parental autonomy. After reviewing traditionally accepted limits on state interference with family functioning, the increased concern for children's emotional well-being, and data relating to one parent education program, the author concludes that providing mandatory "basic level" informational programs to all separating parents seeking access to the family law regime is a warranted level of state intervention.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Ran Kuttner, *The Wave/Particle Tension in Negotiation*, 16 HARV. NEGOTIATION L. REV. 331 (2011).
This article proposes that negotiation should best be viewed through an analogy to the wave/particle duality of matter, a notion found in quantum mechanics. The negotiation process should be viewed as both an adversarial and collaborative process, with the negotiator determining which approach is more suitable for the task at hand.
{1} NEGOTIATION – GENERAL
{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Jeffrey Lagomarsino, *WTO Dispute Settlement and Sustainable Development: Legitimacy Through Holistic Treaty Interpretation*, 28 PACE ENVTL. L. REV. 545 (2011).
WTO adjudicators are permitted to incorporate public international law by the customary rules of treaty interpretation found in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. These rules not only guide adjudicators in treaty interpretation, but they permit adjudicators considerable access to general principles and substantive norms beyond the WTO treaty. This article explains the extent and nature of the incorporation of public international law into WTO dispute settlement and how it has been highly contentious.
{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L

John Lande, *An Empirical Analysis of Collaborative Practice*, 49 FAM. CT. REV. 257 (2011).
This article summarizes empirical research about Collaborative Practice, the Collaborative movement, its interaction with other parts of the dispute resolution field, and its impact on the field. It reviews studies of Collaborative Practice and it suggests an agenda for future research. Finally, it offers suggestions for constructive development of the field.
{53} COLLABORATIVE LAW – GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Susan Landrum, *The Ongoing Debate about Mediation in the Context of Domestic Violence: A Call for Empirical Studies of Mediation Effectiveness*, 12 CARDOZO J. CONFLICT RESOL. 425 (2011).
The author focuses on the roughly three-decades-old debate on whether mediation is an appropriate form of family dispute resolution when the parties involved have a history of domestic violence. The article suggests there is an effective method of using mediation to solve such family disputes but claims not enough research is available to determine what the best practices are for mediating these family disputes. A potential study is proposed to provide information on the effectiveness of mediation between parties with a history of domestic violence.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Elena B. Langan, *"We Can Work it Out": Using Cooperative Mediation—A Blend of Collaborative Law and Traditional Mediation—To Resolve Divorce Disputes*, 30 REV. LITIG. 245 (2011).
The author seeks to combine the beneficial aspects of collaborative law and mediation, and avoid the negative aspects of each, in forming a favorable process to resolve divorce disputes.
{21} MEDIATION – GENERAL
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Allison Orr Larsen, *Bargaining Inside the Black Box*, 99 GEO. L.J. 1567 (2011).
Many juries use negotiation to reach a verdict, which can be understood in the context of plea bargaining. The author argues intrajury negotiation is not a flaw, but, like plea bargains, is a reality of American criminal law. The article uses a comparison to plea bargains to better understand intrajury negotiation and to propose possible reforms.
{1} NEGOTIATION – GENERAL
{82} SUBJ MATTER: CRIMINAL

David Allen Larson, *"Brother, Can You Spare a Dime?" Technology Can Reduce Dispute Resolution Costs When Times Are Tough and Improve Outcomes*, 11 NEV. L.J. 523 (2011).
The article analyzes the ways in which technology mediated dispute resolution (TMDR) can be more efficient and cost-effective than traditional, face-to-face, ADR methods. It specifically looks at online methods and the Cybersettle and Smartsettle programs, both of which are currently available TMDR programs. It concludes by noting the untapped potential of TMDR and calling on practitioners to more readily adopt TMDR.
{60} ADR – GENERAL
{78} SUBJ MATTER: COMPUTER

Michael H. LeRoy, *Are Arbitrators Above the Law? The "Manifest Disregard of the Law" Standard*, 52 B.C. L. REV 137 (2011).
This article studies the role of courts when they review awards that "manifestly disregard the law." The Supreme Court has stated that it cannot review awards beyond the FAA's express terms, but it is not clear if that would include an arbitrator's "manifest disregard" of the law. The author analyzes the phrase through historical and empirical methods, contending that Congress inadvertently omitted "manifest disregard" from the FAA and

that the standard should be affirmed to ensure that arbitrators cannot disregard the law.
{44} ARBITRATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Elana Levi-Tawil, Note, *East Meets West: Introducing Sharia into the Rules Governing International Arbitrations at the BCDR-AAA*, 12 CARDOZO J CONFLICT RESOL. 609 (2011).
The note explains a number of arbitral awards in the Middle East have gone unrecognized as a result of certain Islamic laws. The author asserts that the American Arbitration Association's Bahrain Chamber for Dispute Resolution cannot be fully effective without incorporating certain aspects of Islam and Sharia into the rules applied to international commercial arbitration proceedings.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Carol B. Liebman, *Medical Malpractice Mediation: Benefits Gained, Opportunities Lost*, 74 LAW & CONTEMP. PROB. 135 (2011).
Through the discussion of two cases brought against New York hospitals, this article examines the role of mediation in medical malpractice disputes. The benefits of mediation include improved patient safety and financial savings for both parties. However, for mediation to work successfully, government officials and health care providers must give guidance as to how conflicts should be handled and the role of the lawyer and physician involved.
{21} MEDIATION – GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Diana M. Link & Richard A. Bales, *Waiving Rights Goodbye: Class Action Waivers in Arbitration Agreements After* Stolt-Nielsen v. AnimalFeeds International, 11 PEPP. DISP. RESOL. L.J. 275 (2011).
The authors argue that the *Stolt-Nielsen* case has further confused what courts should do when arbitration agreements waive parties' rights to bring class action suits. Rather than taking a bright-line approach, the authors advocate for a totality of the circumstances approach to determine the enforceability of class action waivers.
{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Kara Loridas, Note, *United States-China Trade War: Signs of Protectionism in a Globalized Economy?*, 34 SUFFOLK TRANSNAT'L L. REV. 403 (2011).
This note discusses the breakdown of negotiations between the U.S. and China under the World Trade Organization's dispute resolution framework. The note also focuses on each country's trade practices, how they fit—or fail to fit—into the WTO's framework, and ultimately concludes that multilateral negotiations, despite their recent lack of success, provide the best hope of resolving the trade war between the U.S. and China.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L

Lucinda Housley Luetkemeyer, *In a Class of Their Own: The Eighth Circuit Upholds a Credit Card Agreement's Class Action Waiver and Mandatory Arbitration Clause,* 76 MO. L. REV. 231 (2011).
This article analyzes the inclusion of class action waivers in arbitration agreements that are included in credit card agreements between credit card companies and consumers. The article asserts that such waivers are a back-door method used by credit card companies to gain immunity from lawsuits, as class action lawsuits are the most likely form of suit against these companies. The article analyzes a growing split amongst circuits regarding these provisions.
{45} ARB: MANDATORY, COURT–ANNEXED – GENERAL
{79} SUBJ MATTER: CONSUMER

Carlo Marichal, Note, *Arbitrating Issues You Might Not Have Agreed To:* Rent-A-Center, West, Inc. v. Jackson, 12 FLA. COASTAL L. REV. 485 (2011).
Through analyzing the Supreme Court's holding in *Rent-A-Center, West, Inc. v. Jackson,* the author argues that the Court misapplied the prior case law used to find the holding. The author asserts this lead the Court to an incorrect decision, which incentivizes employers to use arbitration in all instances, precluding employees from going to the courts for redress.
{44} ARBITRATION – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{133} COURT REFORMS

Ioana Marinescu, *Are Judges Sensitive to Economic Conditions? Evidence from UK Employment Tribunals,* 64 INDUS. LAB. REL. REV. 673 (2011).

This article looks at labor tribunals used to adjudicate labor law cases generally, as well as specialized labor tribunals that deal with unfair dismissal cases. The author argues that economic conditions like unemployment and bankruptcy can impact how judges on the arbitral panels implement legislation.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{94} SUBJ MATTER: LABOR—DISCRIMINATION

William E. Marple & Andrew O. Wirmani, *Waiver of the Right to Remove in Forum Selection Clauses Subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 62 MERCER L. REV. 501 (2011).
This paper argues that contrary to the prevailing judicial view, the intent of parties to waive their right to remove in cases subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards should be determined by applying ordinary principles of contract construction. The article supports this argument by asserting, among other issues, that analyzing such waivers under heightened scrutiny is inconsistent with Supreme Court principles established by the Supreme Court for construing arbitration provisions.
{44} ARBITRATION – GENERAL
{104} SUBJ MATTER: REGULATORY

Sarah S. Matari, Note, *Mediation to Resolve the Bedouin-Israeli Government Dispute for the Negev Desert*, 34 FORDHAM INT'L L.J. 1089 (2011).
Focusing on the issue of power imbalances and how it can affect the fairness of mediation settlements, the author analyzes whether the Negev Bedouins and the Israeli government should use mediation in resolving their land dispute. The author concludes that with the use of safe mediation methods, like mediator preparation, the power imbalance should not stop such parties from using mediation to resolve a dispute.
{21} MEDIATION – GENERAL
{92} SUBJ MATTER: INT'L

Mark G. Materna, *An Unnecessary Consternation: An Analysis of the Future of EU Arbitration in the Wake of the* West Tankers *Decision*, 11 PEPP. DISP. RESOL. L.J. 571 (2011).

The article suggests that the recent *West Tankers* decision in the European Court of Justice is not a death sentence, but is instead the start of a bright future for arbitration in the EU. The author seeks to quell fears that the West Tankers decision will have catastrophic consequences.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Matthew J. McCauley, Comment, *Divorce and the Welfare of the Child in Japan*, 20 PAC. RIM L. & POL'Y J. 589 (2011).
Japan should reform its Civil Code to recognize visitation as a right for the noncustodial parent and allow parents to exercise joint custody over children. The system needs to be reformed to require the judicial oversight of parenting plans, and to create an effective mediation and enforcement system to resolve disputes. Legal institutions need to be able to serve as an impartial third party mediator that will work with the parents to resolve disputes as well as provide a stronger legal remedy in case this mediation fails.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{92} SUBJ MATTER: INT'L

Richard H. McLaren, *Is Sport Losing Its Integrity?*, 21 MARQ. SPORTS L. REV. 551 (2011).
This article argues that the erosion of sporting integrity is partly attributable to the weakness of the dispute resolution system's ability to cope with cases arising from gambling and drugs coming forward for adjudication dealing with corruption. The paper contends that the current arbitration model is not up to the challenge, and that the effect of inadequate pursuit of existing regulation and its lack of administration enforcement, combined with this ineffective adjudication, are causing the erosion of sport's integrity.
{44} ARBITRATION – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Nate Mealy, Note, *Mediation's Potential Rule in International Cultural Property Disputes*, 26 OHIO ST. J. ON DISP. RESOL. 169 (2011).
Respecting state sovereignty in international cultural property disputes is crucial because it is the lack of such respect in documents like the UNESCO Convention that has forced market nations to enact cultural property regimes which strip source nations of their ability to equitably pursue looted cultural property. Mediation should be used to resolve such disputes because it is

confidential (as is arbitration) and before mediation begins, disputants can agree to make the proceedings and the result completely private.
{21} MEDIATION – GENERAL
{92} SUBJ MATTER: INT'L
{87} SUBJ MATTER: GOV'T

Carrie J. Menkel-Meadow, *Scaling Up Deliberative Democracy as Dispute Resolution in Healthcare Reform: A Work in Progress*, 74 LAW & CONTEMP. PROB. 1 (2011).
During the healthcare reform "town hall" meetings, the practices of conflict resolution and deliberative democracy turned adversarial. This article argues that in order for conflict resolution and deliberative democracy to be effective in this role, their emphasis needs to be on a societal and not individual level. Finally, this article suggests what might make a town hall meeting successful in the future.
{1} NEGOTIATION – GENERAL
{77} SUBJ MATTER: COMMUNITY
{87} SUBJ MATTER: GOV'T

Carrie J. Menkel-Meadow, *The Viable Morality of Constitutional (and Other) Compromises: A Comment on Sanford Levinson's Compromise and Constitutionalism*, 38 PEPP. L. REV. 903 (2011).
The author explores the uniqueness of constitutional formation in terms of dispute resolution. She reminds the reader that the implications of settlements must be evaluated against variable, relative circumstances, rather than against universal standards of what is "principled."
{1} NEGOTIATION – GENERAL
{73} SUBJ MATTER: GENERAL

James Michel, *Alternative Dispute Resolution and the Rule of Law in International Development Cooperation*, 2011 J. DISP. RESOL. 21 (2011).
This article focuses on alternative dispute resolution's role in strengthening the rule of law in development programs. The article reviews the concept of international cooperation supporting development and discusses how informal processes such as alternative dispute resolution can advance human security and dignity.
{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L

Carl F. Minzner, *China's Turn Against the Law*, 59 AM. J. COMP. L. 935 (2011).
This article analyzes China's efforts to revive pre-1978 court mediation practices in an effort to counteract some of the legal reforms implemented during the 1980's and 90's. Although this move away from litigation is similar to current trends in other countries the author concludes that within China other factors, such as traditional top-down authority and social stability concerns, are playing a significant role. In light of these developments the author argues that China's current course may have severe long-term consequences and that scholars should be paying less attention to the formal structure of China's legal system and more attention to how it actually operates.
{21} MEDIATION – GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Mordehai Mironi, *Experimenting With Alternative Dispute Resolution as a Means for Peaceful Resolution of Interest Labor Disputes in Public Healthcare – A Case Study*, 74 LAW & CONTEMP. PROBS. 201 (2011).
This article centers on a case study involving a nationwide strike of Israeli medical professionals in 2000, exploring the government's use of crisis mediation, preventative mediation, and a ten-year, voluntary no-strike arbitration regime. The article analyzes the use of no-strike arbitration with a focus on the process-oriented aspects of arbitration, as well as the broader policy-oriented implications.
{44} ARBITRATION – GENERAL
{94} SUBJ MATTER: LABOR – GENERAL
{134} DISPUTE PREVENTION

Cecelia G. Morris & Mary K. Guccion, *The Loss Mitigation Program Procedures for the United States Bankruptcy Court for the Southern District of New York*, 19 AM. BANKR. INST. L. REV. 1 (2011).
This article explains the Loss Mitigation Program created by the Bankruptcy Court for the Southern District of New York. The Bankruptcy Court created this program, whose main feature is forced communication between the parties, in an effort to deal with the explosion of bankruptcy litigation. The article discusses basic bankruptcy principles and the recent housing crisis, before detailing the legal basis for the court-ordered mediation program, its development, and its relative strengths.
{21} MEDIATION – GENERAL

{74.5} SUBJ MATTER: BANKRUPTCY

Forrest S. Mosten, *The Future of Collaborative Practice: A Vision for 2030*, 49 FAM. CT. REV. 282 (2011).
The article examines the state of collaborative practice today, where some leading collaborative practitioners believe we are heading in the near future. This article offers twelve predictions of ways in which collaborative practice will grow and flourish within the next twenty years. The key to whether these predictions will come true may depend on the vision created by current collaborative professionals and those that choose that path in the years ahead.
{53} COLLABORATIVE LAW – GENERAL
{73} SUBJ MATTER: GENERAL

Peter Muhlberger, *A Deliberative Look at Alternative Dispute Resolution and the Rule of Law*, 2011 J. DISP. RESOL. 145 (2011).
This article examines the relationship between democratic deliberation and alternative dispute resolution, asserting that an affinity between the two approaches and their common opponent in adversarial theory indicates the value of collaboration between them. Critiquing the analysis of theorist Hiro Aragaki, the article suggests potential improvements and re-theorizing of both democratic deliberation and alternative dispute resolute.
{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL

Shannon K. Murphy, *Clouded Diamonds: Without Binding Arbitration and More Sophisticated Dispute Resolution Mechanisms, The Kimberley Process Will Ultimately Fail in Ending Conflicts Fueled by Blood Diamonds*, 11 PEPP. DISP. RESOL. L.J. 207 (2011).
The author argues that the agreement of the Kimberly Process Certification Scheme for certifying non-blood diamonds would more effectively end blood-diamond-related conflicts with a binding arbitration clause.
{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER
{149} QUALITY CONTROL

Richard A. Nagareda, *The Litigation-Arbitration Dichotomy Meets the Class Action*, 86 NOTRE DAME L. REV. 1069 (2011).
By contrasting two recent Supreme Court decisions, this article compares the Court's treatment of class action litigation and class arbitration, specifically with regard to aggregation of the class. The article then promotes the need

for more similarity within these two procedures and suggests that the framework for such a convergence is already in place.
{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

Richard K. Neumann, Jr., Tina L. Stark & Howard Katz, *Negotiations*, 12 TRANSACTIONS 153 (2011).
This three-part article discusses current issues in negotiations. The first part discusses unknowns in deal negotiations and how they might be researched. The second part discusses issues in teaching transactional negotiations and why a contract-drafting course should be a prerequisite. The final part discusses the importance of negotiations to lawyers and why the subject should be part of the required law school curriculum.
{1} NEGOTIATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{155} TEACHING

Sean F. Nolon, *Negotiating the Wind: A Framework to Engage Citizens in Siting Wind Turbines*, 12 CARDOZO J. CONFLICT RESOL. 327 (2011).
The author examines the tension between the global concern of developing more environmentally friendly and sustainable forms of energy production and the more local concern of determining where to place new forms of energy infrastructure—wind turbines, in particular. To assist in resolving this tension, a framework is proposed to negotiate the positioning of these wind turbines by involving citizens and federal-state-local partnerships at various stages of the process.
{1} NEGOTIATION – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{102} SUBJ MATTER: PUBLIC POLICY

Karsten Nowrot, *Transnational Corporations as Steering Subjects in International Economic Law: Two Competing Visions of the Future?*, 18 IND. GLOBAL LEGAL STUD. 803 (2011).
This article argues that transnational corporations are becoming important political actors who play an increasingly active role in the progressive development and enforcement of international economic regulatory structures. As evidence of this phenomenon, the author discusses TNCs' frequent use of investment arbitration in the form of mixed dispute

settlement, as well as its direct use between host states and foreign investors (mainly TNCs).
{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Mark R. Otis, *Expanding Collaborative Divorce through Social Sciences*, 49 FAM. CT. REV. 229 (2011).
This article addresses how collaborative law can further expand its theoretical and practical base by drawing from social science perspectives on negotiation, conflict resolution and third-party interventions. It also explores how collaborative practice draws upon two prevailing models of negotiation, the strategic problem-solving and the social-psychological model, and demonstrates how tools from each model can be used at different points in a collaborative case's lifecycle.
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Mary Pennisi, *Enforcing International Insurers' Expectations: Can States Unilaterally Quash Commercial Arbitration Agreements Under the McCarran-Ferguson Act*, 16 FORDHAM J. CORP. & FIN. L. 177 (2011).
The author examines the circuit court split on whether the reversal of the McCarran-Ferguson Act preempts the United Nations Convention on the Recognition and the Enforcement of Arbitral Agreements and allows states to invalidate international insurance contracts' arbitration agreement clauses. The author concludes that the Supreme Court and Congress should limit states' power to preclude parties from enforcing arbitration clauses in international insurance contracts.
{44} ARBITRATION – GENERAL
{75} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER INT'L
{144} LEGISLATION

Roger J. Perlstadt, *Interlocutory Review of Litigation-Avoidance Claims: Insight From Appeals Under The Federal Arbitration Act*, 44 AKRON L. REV. 375 (2011).
This article explains the interlocutory appeals process provided in the Federal Arbitration Act and how this process has created significant problems. Section 16(a) of the Federal Arbitration Act provides the grounds for this

process and after a thorough analysis of this section, the author suggests a more effective analysis of potential error costs of the appeals process.
{44} ARBITRATION – GENERAL
{87} SUBJ MATTER: GOV'T

Sandra J. Perry, Tanya M. Marcum & Charles R. Stoner, *Stumbling Down the Courthouse Steps: Mediators' Perceptions of the Stumbling Blocks to Successful Mandated Mediation in Child Custody and Visitation*, 11 PEPP. DISP. RESOL. L.J. 441 (2011).
The authors performed a study into practitioners' perceptions of what reduces the effectiveness of mandatory mediation in family law contexts and make suggestions as to how the process may be improved.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Donald R. Philbin Jr., Audrey L. Maness & Philip J. Loree Jr., *Alternative Dispute Resolution: Litigating Arbitration Slows as Mediation Becomes More Popular*, 43 TEX. TECH L. REV. 757 (2011).
This article presents an overview of the current trends in ADR generally and arbitration in particular. The article focuses on recent Supreme Court and Fifth Circuit precedent and determines that, while courts are wrestling with substantial issues in arbitration agreements, mediation is on the rise.
{21} MEDIATION – GENERAL
{44} ARBITRATION – GENERAL
{73} SUBJ MATTER: GENERAL.

Daniel B. Pickar & Jeffrey J. Kahn, *Settlement-Focused Parenting Plan Consultations: An Evaluative Mediation Alternative to Child Custody Evaluations*, 49 FAM. CT. REV. 59 (2011).
The "settlement-focused parenting plan consultation" (SFPPC) is a form of evaluative mediation, conducted by a "parenting plan consultant" (PPC), who possesses the combined expertise of a mediator and child custody evaluator. This article describes the theory underlying the SFPPC, delineates the role requirements, procedures, and techniques of the parenting plan consultant, and addresses legal and ethical issues.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Jarred Pinkston, *In Rem Jurisdiction in an Action to Confirm and Enforce a Foreign Arbitral Award Generally and Jurisdiction Based Upon the Presence of a U.S. Subsidiary Specifically*, 30 REV. LITIG. 415 (2011).
The author explores the tensions in U.S. courts seeking to enforce foreign arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Author suggests that the presence of a U.S. subsidiary can provide a jurisdictional basis to confirm an international arbitral award against the parent company.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Stephen A. Plass, *Mandatory Arbitration as an Employer's Contractual Prerogative: The Efficiency Challenge to Equal Employment Opportunity*, 33 CARDOZO L. REV. 195 (2011).
Parts I and II examine the historical discretion granted employers in determining labor contract provisions, beginning with a look at the emancipation of slaves attempting to contract their labor and continuing through the 1900s. Parts III and IV examine the efficiency and other economic interests employers have in attempting to require arbitration, and the author concludes that arbitration provisions should only be optional and voluntary.
{45} ARB: MANDATORY, COURT-ANNEXED – GENERAL
{93} SUBJ MATTER: LABOR – GENERAL
{127} REQUIREMENTS: MANDATE TO USE

Lucille M. Ponte, *Getting a Bad Rap? Unconscionability in Clickwrap Dispute Resolution Clauses and a Proposal for Improving the Quality of These Online Consumer "Products,"* 26 OHIO ST. J. ON DISP. RESOL. 119 (2011).
The online merchant should provide users with choices in their dispute resolution methods that reflect the merchant's own dispute resolution options under the clickwrap terms of use. In the context of unconscionability, standard form contracts for consumers are not true contracts, but are more like "products" that should be required to meet basic standards of quality.
{60} ADR – GENERAL
{78} SUBJ MATTER: COMPUTER
{149} QUALITY CONTROL

Josephine R. Potuto & Jerry R. Parkinson, *If It Ain't Broke, Don't Fix It: An Examination of the NCAA Division I Infractions Committee's Composition and Decision-Making Process*, 89 NEB. L. REV. 437 (2011).
This article presents and analyzes both the requirements for membership as well as the processes used in the NCAA's Division I Infractions Committee. The article advocates that the model currently used is the model best suited for resolving disputes about NCAA rules infractions and is superior to any other model that has been proposed. The authors are both former members of the Committee.
{60} ADR – GENERAL
{107} SUBJ MATTER: SPORTS & ENTERTAINMENT
{146} ORGANIZATION POLICIES & RULES

Sharon Press, *Mortgage Foreclosure Mediation in Florida – Implementation Challenges for an Institutionalized Program*, 11 NEV. L.J. 368 (2011).
The author traces the extensive history of Florida's use of mediation in civil cases before turning to the state's use of mediation after the 2008 financial crisis. The article, while critical of the program's slow implementation in light of the large volume of foreclosure cases, concludes with a generally positive reflection on the program's successful track record since implementation.
{21} MEDIATION – GENERAL
{87} SUBJ MATTER: GOV'T

Bruce M. Price, *Halting, Altering and Agreeing*, 38 S.U. L. REV. 233 (2011).
This article concerns the dispute-resolution process that occurs in the context of Chapter 11 bankruptcy. The author argues that the Chapter 11 bankruptcy dispute system accomplishes many goals of Alternative Dispute Resolution (ADR), and at the same time avoids many of the ideological and substantive critiques associated with ADR. Chapter 11 bankruptcy represents a process of Halting, Altering, and Agreeing that differs substantially from the classic Naming, Claiming, and Blaming dispute process.
{60} ADR – GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

Matthew J. Prieksat, Note, *Preventing a Pipeline to Nowhere: The Alaska Native Claims Settlement Act as a Model for Resolving the Unsettled Land*

Claims of the First Nations of Canada, 19 TRANSNAT'L L. & CONTEMP. PROBS. 977 (2011).
A pipeline to deliver natural gas from Alaska to the lower forty-eight states would stretch through Canada, and unsettled land claims in Canada are preventing such a line from being created. The author discusses the issues with using negotiations to settle these claims, and proposes legislation settling all claims at once be utilized instead.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY

Will Pryor, *Alternative Dispute Resolution*, 64 SMU L. R. 3 (2011).
This article briefly discusses mediation, arbitration, and collaborative law as applied in Texas. The author compares the very limited judicial interaction with the practice of mediation to the extensive judicial involvement with arbitration. Collaborative law is an infant area in Texas and is principally used in family law matters.
{60} ADR – GENERAL
{73} SUBJ MATTER: GENERAL

Orna Rabinovich-Einy, *Escaping the Shadow of Malpractice Law*, 74 LAW & CONTEMP. PROBS. 241 (2011).
This article focuses primarily on healthcare policy, communication theory, and medical malpractice doctrine. The article looks to the need for, and obstacles to, addressing non-judiciable claims, how malpractice law shapes the ways in which other disputes are addressed in medical settings, and the potential for creating change through professional, organizational, and legal developments.
{21} MEDIATION – GENERAL
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{134} DISPUTE PREVENTION

Danya S. Reda, *Critical Conflicts Between First-Wave and Feminist Critical Approaches to Alternative Dispute Resolution*, 20 TEX. J. WOMEN & L. 193 (2011).
This article separates critical legal scholarship into two categories: "first-wave" and "feminist." Thus, bifurcated the author analyzes critical legal scholarship through the conflicting sentiments existing within critical legal scholarship toward Alternative Dispute Resolution. The article suggests that

such an analysis enables an understanding of the divergence in approach between "first-wave" and later critical legal scholarship.
{60} ADR – GENERAL
{77} SUBJ MATTER: COMMUNITY
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Amelia C. Rendeiro, Note, *Indian Arbitration and "Public Policy,"* 89 TEX. L. REV. 699 (2011).
This article analyzes the tension existing between the goals of attracting international investment and promoting domestic public policy. Because of overloaded court dockets, arbitration is a frequent tool not only for international corporate entities but also for individual parties. The article proposes solutions to reconcile the perceived tensions between the goal of fostering international investment and the administration of fair dispute resolution for domestic parties through arbitration.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{102} SUBJ MATTER: PUBLIC POLICY

David P. Riesenberg, *Fee Shifting in Investor-State Arbitration: Doctrine and Policy Justifying Application of the English Rule*, 60 DUKE L.J. 977 (2011).
This article addresses treatment of legal costs arising from investor-state arbitration proceedings. The author analyzes the benefits the English rule, which states that an unsuccessful party in a dispute must indemnify the prevailing party for the costs of arbitration. The author provides doctrinal and policy reasons for preferring this rule over the other options for arbitration tribunals.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L

Joel D. Rosen & James B. Shrimp, *Yes to Arbitration, But Did I Also Agree to Class Action and Consolidated Arbitration*, 30 FRANCHISE L.J. 175 (2011).
This article focuses on the current state of arbitration agreements after the United States Supreme Court decision in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 130 S. Ct. 1758 (2010). It considers if there should be new language included in arbitration agreements or language excluded from them in order to prevent class action suits and consolidated arbitration.
{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

Anne Elizabeth Rosenbaum, Note, *Embracing the Strengths and Overcoming the Weaknesses of Child Protection Mediation*, 15 UC DAVIS J. JUV. L & POL'Y 299 (2011).
This paper analyzes Child Protection Mediation and its various strengths and weaknesses. With each weakness a mediation program is discussed as an effort to mitigate the weaknesses. In conclusion, the paper provides a call to action for parties to remodel CPM programs, start a new program, work in mediations, or participate as a party.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Ira S. Rubinstein, *Privacy and Regulatory Innovation: Moving Beyond Voluntary Codes*, 6 I/S: J. L. & POL'Y FOR INFO. SOC'Y 355 (2011).
This article argues for a co-regulatory approach to privacy regulation. In this co-regulatory approach, the government plays a role in setting requirements for industry guidelines and imposes sanctions for non-compliance, while a normative framework developed using negotiated rulemaking is used for evaluating self-regulatory mechanisms.
{1} NEGOTIATION – GENERAL
{104} SUBJ MATTER: REGULATORY

Michael B. Runnels, *Dispute Resolution & New Governance: Role of the Corporate Apology*, 34 SEATTLE UNIV. L. R. 481 (2011).
This article discusses the modern corporate social responsibility (CSR) movement while emphasizing the importance of apology in improving corporate behavior. Because apologies play a central role in dispute resolution, the author suggests that adapting a New Governance approach, which encourages dialogue about regulatory principles from the perspectives of industry, CSR advocates, and shareholders, will incentivize the corporate apology and thus improve corporate ethics.
{60} ADR – GENERAL
{81} SUBJ MATTER: CORPORATE

Erin Ryan, *Negotiating Federalism*, 52 B.C. L. REV. 1 (2011).
The author analyzes how public actors navigate difficult federalism terrain by negotiating directly with counterparts across state-federal lines, and demonstrates that the boundary between state and federal power is negotiated on both a small and large scale, and on an ongoing basis. The article also

recognizes the procedural tools that bilateral federalism bargaining offers to supplement unilateral federalism interpretation in contexts of jurisdictional overlap. The author recommends kinds of federalism bargaining that should be encouraged, and the article offers recommendations for legislators, executive actors, stakeholders, practitioners, and adjudicators about how best to accomplish these goals.
{1} NEGOTIATION – GENERAL
{87} SUBJ MATTER: GOV'T

Benjamin Sachs-Michaels, Note, *The Demise of Class Actions Will Not Be Televised*, 12 CARDOZO J. CONFLICT RESOL. 665 (2011).
The note begins with a discussion of the background and common law leading to the rise of compulsory arbitration clauses and class action waivers in consumer contracts. The author goes on to claim that the current trend is to cut against class waivers and then questions whether arbitration is a feasible method to resolve major consumer disputes in a fair and just manner.
{44} ARBITRATION – GENERAL
{79} SUBJ MATTER: CONSUMER

Tenesa S. Scaturro, Note, *The Anticybersquatting Consumer Protection Act and the Uniform Domain Name Dispute Resolution Policy: The First Decade: Looking Back and Adapting Forward*, 11 NEV. L.J. 877 (2011).
Cyber-squatting is a practice whereby individuals attempt to profit off of the good name of corporations by occupying domain names that closely relate to a corporation's name. The author investigates the history of cyber-squatting and the techniques used to resolve disputes between squatters and corporations. The article then calls for Congress, as opposed to the courts, to extend anti-cyber-squatting legislation to keep up with offenders' new techniques.
{60} ADR – GENERAL
{78} SUBJ MATTER: COMPUTER
{144} LEGISLATION

Andrea Kupfer Schneider & Natalie C. Fleury, *There's No Place Like Home: Applying Dispute Systems Design Theory to Create a Foreclosure Mediation System*, 11 NEV. L.J. 368 (2011).
This article uses the Dispute Systems Design Theory as a lens through which to analyze the Marquette Foreclosure Mediation Program (MFMP), implemented in Milwaukee in the aftermath of the 2008 financial crisis. The

article then takes the lessons learned from the creation of the MFMP and extrapolates them into recommendations for similar programs.
{21} MEDIATION – GENERAL
{87} SUBJ MATTER: GOV'T

Landon R. Schwob, Note, *The Case Against Maritime Class Arbitration: A Brief Policy Argument*, 11 PEPP. DISP. RESOL. L.J. 421 (2011).
This article explores the implications of the Stolt-Nielson case on class arbitration, specifically in the maritime industry.
{44} ARBITRATION – GENERAL
{97} SUBJ MATTER: MARITIME

Daniel P. Selmi, *The Contract Transformation in Land Use Regulation*, 63 STAN. L. REV. 591 (2011).
Land usage regulation has shifted from a hierarchical, permit-granting model towards a negotiation-centric model with a binding contract as its goal. The author discusses how the private, bilateral nature of contract negotiations represents a shift away from the values of the original regulatory scheme, and how these types of negotiations both comport with and deviate from the so-called "New Governance" scheme, particularly in their lack of transparency and multi-party collaboration.
{1} NEGOTIATION – GENERAL
{87} SUBJ MATTER: GOV'T
{102} SUBJ MATTER: PUBLIC POLICY
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Megan Wells Sheffer, *Bilateral Investment Treaties: A Friend or Foe to Human Rights?*, 39 DENV. J. INT'L L. & POL'Y 483 (2011).
This article focuses on a dispute resolution clause found within Bilateral Investment Treaties (BITs) that addresses corporate-related human rights violations. The article explains how current BITs grant multinational corporations the right to initiate arbitration against a State when the State has failed to fulfill its obligations under the treaty. The author provides suggestions as to how BITs may be restructured to be more effective in resolving disputes over human rights violations.
{44} ARBITRATION – GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Joseph A. Siegel, *Energy and the Environment: Preventing and Resolving Conflicts: Keynote Speech*, 12 CARDOZO J. CONFLICT RESOL. 411 (2011).
Siegel focused on the environmental concerns of climate change and sustainable energy, while explaining the positive impact that alternative dispute resolution methods can have on finding a solution for these issues. Siegel covered three forms of dispute resolution: interest based negotiation, collaborative decision-making between government and stakeholders, and collaborative decision-making within the federal government.
{60} ADR – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{102} SUBJ MATTER: PUBLIC POLICY

May Olivia Silverstein, *Introduction to International Mediation and Arbitration: Resolving Labor Disputes in the United States & The European Union*, 1 AM. U. LABOR & EMP. L.F. 101 (2011).
This article discusses the history of labor arbitration and mediation methodologies in the United States and compares them to those utilized by countries in the European Union. It also evaluates the use of these methodologies in resolving labor disputes and if there are ways to make the methodologies more effective and efficient in dealing with such disputes.
{44} ARBITRATION – GENERAL
{21} MEDIATION – GENERAL
{93} SUBJ MATTER: LABOR – GENERAL
{124} COMPARISONS: CROSS-CULTURAL

Chelsea A. Sizemore, Note, *Enforcing Islamic Mahr Agreements: The American Judge's Interpretational Dilemma*, 18 GEO. MASON L. REV. 1085 (2011).
Courts should refuse to enforce overly vague Islamic mahr marriage agreements. US judicial interpretation of mahr agreements has been inconsistent and leads to confusing precedent. Non-enforcement will incentivize users of mahr agreements to reform them to be less vague and to include arbitration provisions.
{44} ARBITRATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Monica R. Skanes, Comment, *The Truth Behind "Final and Binding" Arbitration: A Study of Vacated Arbitration Awards in the New York Appellate Division*, 74 ALB. L. REV. 983 (2011).

This article examines the New York and national policy of favoring arbitration settlements as final and binding. The author concludes—based upon a ten-year study—that the New York Appellate Division is vacating too many arbitration awards, particularly among those relating to employment law. Therefore, the New York policy should be changed or the New York Appellate Division must exhibit greater judicial restraint and allow arbitration decisions to stand.
{44} ARBITRATION – GENERAL
{93} SUBJ MATTER: LABOR – GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Joseph E. Slater, *Lessons From the Public Sector: Suggestions and a Caution*, 94 MARQ. L. REV. 917 (2011).
This paper, in part, discusses "interest arbitration" in settling the terms of a first contract in the employment context. The relevant part of the paper also discusses how public sector experience could be used to improve the interest arbitration provisions of the Employee Free Choice Act.
{44} ARBITRATION – GENERAL
{93} SUBJ MATTER: LABOR – GENERAL

David Smith, *Shifting Sands: Costs-and-Fee Allocation in International Investment Arbitration,* 51 VA. J. INT'L L. 749 (2011).
International investment arbitration is generally expensive. The World Bank and the UN allow for significant discretion in apportioning arbitration and attorney's fees. This article discusses how this discretion affects arbitration, including the willingness of parties to participate in arbitration. It advocates a fixed formula for determining fee and cost apportionment.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{146} ORGANIZATION POLICIES & RULES

Anna Spain, *Beyond Adjudication: Resolving International Resource Disputes in an Era of Climate Change*, 30 STAN. ENVTL. L.J. 343 (2011).
Developing effective means of international dispute resolution is of critical importance as climate change threatens resources. The author argues that standard international adjudication is not the most effective means of resolving these disputes, instead suggesting that adjudication integrated with facilitated negotiation and mediation can best resolve international resource disputes.

{21} MEDIATION – GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{92} SUBJ MATTER: INT'L

Anne Louise St. Martin & J. Derek Mason, *Arbitration: A Quick and Effective Means for Patent Dispute Resolution*, 12 N.C. J. L. & TECH. 301 (2011).
This article promotes the use of an arbitration clause between parties who are contracting for license and research agreements with regards to a patent. Employing arbitration in these agreements can strengthen the business relationship by assuring that any dispute will be handled quickly, inexpensively, and by a technologically knowledgeable neutral arbitrator.
{44} ARBITRATION – GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{136} ECONOMIC ADVANTAGES OF ADR

Maya Steinitz, *Whose Claim is This Anyway? Third-Party Litigation Funding*, 95 MINN. L. REV. 1268 (2011).
Steinitz utilizes three fact scenarios to argue that while third-party funding may be beneficial in some respects, it is nonetheless imperative that restrictive regulations be imposed while also minimizing opportunities for abuse of the process and the interests of parties. While third-party funding in litigation, class actions, and international arbitration may increase access and even bargaining positions, complex regulatory regimes must be implemented to ensure that potential pitfalls are avoided.
{44} ARBITRATION – GENERAL
{104} SUBJ MATTER: REGULATORY

Stewart E. Sterk, *Structural Obstacles to Settlement of Land Use Disputes*, B.U. L. REV. 227 (2011).
This article explores the current problems with settling land use litigation. The author demonstrates that those obstacles to settlement serve few critical functions within the traditional "plan" model of land use regulation, but they do play a significant role within a more modern model that treats municipal officials as mediators of land use conflicts. The article suggests that within a mediation model, litigation operates to ensure adequate participation in the decision making process. It suggests that a regime that bars potential objectors from challenging a settlement unless they participated in the litigation that generated the settlement would retain the primary advantages of current restrictions on settlement.

{21} MEDIATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Charles R. Stoner, Sandra J. Perry & Tanya M. Marcum, *The Court, the Parent and the Child: Mediator Perceptions of the Purpose and Impact of Mandated Mediation in Child Custody Cases*, 13 J.L. FAM. STUD. 151 (2011).
In child custody cases, mediation may be a less divisive way for parents to decide child custody and visitation. This article explores various state laws permitting or mandating mediation in child custody cases and outlines the research methods the authors used interviewing mediators. Finally, this article explores five mediation impact categories: immediate court impact, extended court impact, child impact, parent impact and a joint parenting assumption.
{21} MEDIATION – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Al Sturgeon, *The Truth Shall Set You Free: A Distinctively Christian Approach to Deception in the Negotiation Process*, 11 PEPP. DISP. RESOL. L.J. 395 (2011).
The author argues the Christian religion, as opposed to professional ethical standards, would require parties in negotiations to be completely honest in order to foster the most beneficial outcomes for those involved and maintain reliability and respect in personal relationships.
{1} NEGOTIATION – GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{125} COMPARISONS: HISTORICAL

Keerthi Sugumaran, Comment, *Arbitration—United States Supreme Court Sounds Death Knell for Class Arbitration*—Stolt Nielsen S.A. v. Animalfeeds Int'l Corp., *130 S. Ct. 1758 (2010)*, 16 SUFFOLK J. TRIAL & APP. ADVOC. 147 (2011).
The author argues that the Supreme Court's decision in *Stolt Nielsen S.A. v. Animalfeeds Int'l Corp.*, a case vacating an arbitration award in a class-action suit where neither side's arbitration agreement included class arbitration because the arbitration in this case was "coercive," undermines arbiters' authority to resolve class disputes while failing to clarify the scope of the holding or the type of language required to consent to class arbitration.
{45} ARB: MANDATORY, COURT ANNEXED – GENERAL

{104} SUBJ MATTER: REGULATORY
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Noah G. Susskind, *Wiggle Room: Rethinking Reservation Values in Negotiation*, 26 OHIO ST. J. ON DISP. RESOL. 79 (2011).
This article provides an overview of what the interest-based negotiation literature has to say about "wiggling" – the concept that people can sometimes be dragged past their reservation value, agreeing to a deal that does not meet it. This article then re-examines keystone concepts of negotiation analysis and concludes by providing a systematic and thorough examination of wiggle room's causes within the context of negotiation, drawing especially from psychology, negotiation analysis, and behavioral economics.
{1} NEGOTIATION – GENERAL
{73} SUBJ MATTER: GENERAL

Kate Montgomery Swearengen, Note, *Tailoring the Taylor Law: Restoring a Balance of Power to Bargaining*, 44 COLUM. J.L. & SOC. PROBS. 267 (2011).
This article examines New York State's "Taylor Law" and its disruptive effect to the balance of bargaining power for public employees in labor disputes. The article argues that this outcome is antithetical to legitimate bargaining. The article further argues for a modification of the "Taylor Law" in order to restore the balance of power between employers and workers while simultaneously maintaining the public order.
{1} NEGOTIATION – GENERAL
{95} SUBJ MATTER: LABOR – MANAGEMENT (UNION)
{87} SUBJ MATTER: GOV'T

Tom Swoboda, *De Novo a "No No:" Contractually Expanded Judicial Review Clauses Do Not Preclude FAA Application in State Court Unless the Parties Make It Intentionally Clear the FAA Does Not Apply in Their Agreement*, 2011 J. DISP. RESOL. 239 (2011).
This article discusses the Alabama Supreme Court's decision in *Raymond James Fin. Servs., Inc. v. Honea* dealing with contracted appellate review in arbitration agreements. The article contends that expanded judicial review beyond the scope of the Federal Arbitration Act should be unenforceable unless parties expressly provide in the agreement that the Act does not apply.
{44} ARBITRATION – GENERAL

{73} SUBJ MATTER: GENERAL
{144} LEGISLATION

Pauline H. Tesler, *Informed Choice and Emergent Systems at the Growth Edge of Collaborative Practice*, 49 FAM. CT. REV. 239 (2011).
This article discusses how team collaboration represents the evolutionary growth edge of the collaborative practice movement. Collaborative lawyers work in teams with financial and mental health professionals to assist each couple through their divorce. The article goes on the discuss how this shared professional engagement in the divorce conflict resolution process gives rise to a need for agreed roadmaps and protocols, sophisticated planning and debriefing sessions, case conferencing, and careful attention to the quality of communications at the negotiating table.
{53} COLLABORATIVE LAW – GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Atsushi Tsuneki & Manabu Matsunaka, *Labor Relations and Labor Law in Japan*, 20 PAC. RIM L. & POL'Y J. 529 (2011).
This article argues that up until the 1990s, Japanese labor law facilitated private bargaining instead of engineering a desired outcome directly through legal regulations. Through this indirect approach, Japanese labor law made a highly positive contribution to the attainment of economic efficiency. After the 1990s, the merits of Japanese employment customs diminished and while such reforms were made in some aspects, Japanese labor law has taken the stance of directly regulating the economy which has hindered the performance of the Japanese economy.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{93} SUBJ MATTER: LABOR – GENERAL

Valentina S. Vadi, *When Cultures Collide: Foreign Direct Investment, Natural Resources, and Indigenous Heritage in International Investment Law*, 42 COLUM. HUM. RTS. L. REV. 797 (2011).
This article examines the tension between protecting cultural heritage and encouraging economic development. Specifically, the article focuses on international investment and arbitration, examining how international investment treaties and arbitral tribunals have dealt with indigenous peoples' rights. The article also offers recommendations to better ensure the protection of indigenous peoples' rights in the context of investor-state arbitrations.
{44} ARBITRATION – GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS
{92} SUBJ MATTER: INT'L

Zachary M. VanVactor, *The Louisiana Direct Action Statute Loses Its Teeth: How the Fifth Circuit in* Todd v. Steamship Mutual Underwriting Ass'n *Opened the Door to Wallow Insurers to Enforce Arbitration Agreements Against the Direct Action Plaintiff.* 35 TUL. MAR. L.J. 659 (2011).
The Fifth Circuit's decision in the noted case effectively undermines Louisiana's direct action statute for arbitration agreements, especially in the maritime context. The court's decision strengthens the security of insurers' arbitration agreements at the expense of Louisiana direct action plaintiffs. Therefore, despite the Louisiana statute's explicit prohibition against insurers' attempts to forbid direct action, insurers can stay a direct action claim or compel a direct action claimant to arbitrate.
{44} ARBITRATION – GENERAL
{97} SUBJ MATTER: MARITIME

Robert W. Wachter, *Ethical Standards in International Arbitration: Considering Solutions to Level the Playing Field,* 24 GEO. J. LEGAL ETHICS 761 (2011).
The differing interpretations of professional codes of conduct throughout the world can lead to unfair proceedings in international arbitration. The author argues that the different national legal systems in which lawyers are trained creates points of divergence in ethics, which can lead to unfair advantages. The article suggests international standards, a checklist approach in which the parties establish standards, and initiative by tribunals in procedural conference as potential solutions.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{138} ETHICS: GENERAL

Justin S. Wales, Note, *Beyond the Sail: The Eleventh Circuit's Thomas Decision and Its Ineffectual Impact on the Life, Work, and Legal Realities of the Cruise Industry's Foreign Employees*, 65 U. MIAMI L. REV. 1215 (2011).
This article argues that despite the Supreme Court's decision in *Thomas v. Carnival Corp.*, which seemingly takes a balanced approach in enforcing private arbitration agreements by considering the federal policy of protecting foreign seafarers, there exists inequity which exploits foreign cruise workers and obliterates any chance afforded to them under U.S. law of receiving

adequate remedies. The paper specifically states that the realities of this context make it difficult for seafarers to submit to arbitration, often the only way for them to vindicate their rights.
{44} ARBITRATION – GENERAL
{97} SUBJ MATTER: MARITIME
{147} POWER IMBALANCE

Geoff Walsh, *The Finger in the Dike: State and Local Laws Combat the Foreclosure Tide*, 44 SUFFOLK U. L. REV. 139 (2011).
The foreclosure crisis has forced state and local governments to find remedies to control the rising tide of foreclosure. Several states have, in response to the recent crisis, enacted legislation requiring the lender to discuss alternatives with the lendee prior to foreclosure, or have made foreclosure contingent on mandatory mediation. Despite these efforts, states have not effectuated their maximum constitutional power to require mediation and mitigation of foreclosure disputes.
{21} MEDIATION – GENERAL
{87} SUBJ MATTER: GOV'T
{144} LEGISLATION

Guigo Wang, *China's FTAs: Legal Characteristics and Implications*, 105 A.J.I.L. 493 (2011).
This article discusses China's growing reliance on free trade agreements as it becomes more integrated in the world economy. The author recognizes that dispute settlement in China's FTAs are usually friendly and nonlitigious, allowing for amicable negotiations with the ability to resort to conciliation, mediation, or arbitration. This both embodies the traditional Chinese values and China's unfamiliarity with the procedures and practices of trade dispute resolution and shows its lack of confidence in the international system.
{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L

Stephen J. Ware, *Similarities Between Arbitration and Bankruptcy Litigation*, 11 NEV. L.J. 436 (2011).
This article highlights the differences between the Federal Rules of Civil Procedure (FRCP) and the rules used in bankruptcy and arbitration proceedings. It concludes that the differences are the driving factor behind the lower expense and expediency of bankruptcy and arbitration. The article does not recommend amending the FRCP to more closely mirror the

bankruptcy and arbitration rules, but questions why parties would choose bankruptcy arbitration over standard bankruptcy procedures.
{44} ARBITRATION – GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

Kimberlee Weatherall, *ACTA as a New Kind of International IP Lawmaking*, AM. U. INT'L L. REV. 839 (2011).
The article states that negotiators need to pay attention to local models in negotiations when working with IP law because, without these models, countries have reasons to oppose treaties. Models for exceptions are also needed so that IP balance can be achieved.
{1} NEGOTIATION – GENERAL
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Mikita A. Weaver, *"El Agua No Se Vende: Water is Not For Sale!" The Latin American Water Tribunal as a Model for Advancing Access to Water*, 11 PEPP. DISP. RESOL. L.J. 519 (2011).
The author uses a case study of the Mazahua water crisis in Mexico and the Latin American Water Tribunal as a dynamic example of how regions can resolve conflicts between resource-commandeering governments and indigenous people.
{60} ADR – GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Stu Webb & Ron Ousky, *History and Development of Collaborative Practice*, 49 FAM. CT. REV. 213 (2011).
This article focuses on the origins, development, and future of collaborative practice. It describes how collaborative practice grew from one attorney in Minnesota to tens of thousands of attorneys, mental health professionals, and financial experts throughout the world during the course of twenty years. Finally, the article looks at the future of collaborative practice, including the challenges that need to be addressed and the possibilities for great expansion.
{53} COLLABORATIVE LAW – GENERAL
{73} SUBJ MATTER: GENERAL
{125} COMPARISONS: HISTORICAL

Wu Wei-Hua, *International Arbitration of Patent Disputes*, 10 J. MARSHALL REV. INTELL. PROP. L. 384 (2011).

This article focuses on arbitration as a method of settling international patent disputes. The article addresses the arbitrability of patent validity disputes and the advantages of arbitration in such a setting and proposes considerations that decision makers must take into account when employing international commercial arbitration as a method of dispute resolution.
{44} ARBITRATION – GENERAL
{92} SUBJ MATTER: INT'L
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Daniel Weitz, *The Brains Behind Mediation: Reflections on Neuroscience, Conflict Resolution And Decision-Making*, 12 CARDOZO J. CONFLICT RESOL. 471 (2011).
The author seeks to raise an awareness of how mediation is affected by scientific discoveries in fields ranging from cognitive-behavioral psychology and neuropsychology to molecular biology. While these past discoveries of scientific phenomena have provided information that may help explain certain aspects of mediation, the article concludes that the dispute resolution community must maintain a dedication to understanding future neuroscience discoveries in order to provide new clues on improving mediation practices.
{21} MEDIATION – GENERAL
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Nancy A. Welsh, *Integrating "Alternative" Dispute Resolution into Bankruptcy: As Simple (and Pure) as Motherhood and Apple Pie?*, 11 NEV. L.J 397 (2011).
In this article, the author highlights the expanding use of ADR techniques in dispute resolution and that many practitioners are unfamiliar with their full potential and exact usage. The article analyzes the problems this lack of familiarity can cause, especially in light of the 2008 financial crisis and subsequent bankruptcy and foreclosure proceedings. The article notes the importance that law schools provide practitioners with the educational foundation for understanding ADR.
{60} ADR – GENERAL
{74.5} SUBJ MATTER: BANKRUPTCY

Paula M. Young, *Teaching the Ethical Values Governing Mediator Impartiality Using Short Lectures, Buzz Group Discussions, Video Clips, a Defining Features Matrix, Games, and an Exercise Based on Grievances Filed Against Florida Mediators*, 11 PEPP. DISP. RESOL. L.J. 309 (2011).

The author discusses the value of mediator impartiality in achieving party self-determination and techniques for teaching ethical values of impartiality.
{21} MEDIATION – GENERAL
{83} SUBJ MATTER: EDUCATION
{138} ETHICS: GENERAL
{155} TEACHING

Ronit Zamir, *The Disempowering Relationship Between Mediator Neutrality and Judicial Impartiality: Toward a New Mediation Ethic*, 11 PEPP. DISP. RESOL. L.J. 467 (2011).
The author discusses the ethics of impartiality and care in mediator neutrality and argues that the narrative mediation model is most accommodating to the empowerment of parties from disadvantaged groups.
{21} MEDIATION – GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL
{147} POWER IMBALANCE

Robert M. Ziff, *The Sovereign Debtor's Prison: Analysis of the Argentine Crisis Arbitrations and the Implications for Investment Treaty Law*, 10 RICH. J. GLOBAL L. & BUS. 345 (2011).
This article examines the logical implications of arbitral decisions finding the Argentine government liable for defaulting on approximately $100B in debt to investors during Argentina's financial crisis in 2002. The author argues that bilateral investment treaties ("BITs"), under which investors brought claims against the government, do not provide investors as a class the ability to seek relief. The author concludes that liability imposed on the government by arbitrators is inappropriate.
{44} ARBITRATION – GENERAL
{92) SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL.

Alexandria Zylstra, *A Call to Action: A Client-Centered Evaluation of Collaborative Law*, 11 PEPP. DISP. RESOL. L.J. 547 (2011).
This article discusses the general process and dangers to clients in collaborative law and then suggests that collaborative law should not be lauded without independent research into its effectiveness as compared to other methods of advocacy.
{53} COLLABORATIVE LAW – GENERAL
{73} SUBJ MATTER: GENERAL